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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

March 15, 2013 - 10:44 a.m.
Concord, New Hampshire

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NHPUC APR17'13 PM 1:26

RE: DE 13-059 RESIDENT POWER, LLC:
*Show Cause as to Whether the Company
should be Subject to Penalties or
Registration Suspension or Revocation.*

DE 13-060 PNE ENERGY SUPPLY, LLC:
*Show Cause as to Whether the Company
should be Subject to Penalties or
Registration Suspension or Revocation.*

PRESENT: Chairman Amy L. Ignatius, Presiding
Commissioner Robert R. Scott
Commissioner Michael D. Harrington

Sandy Deno, Clerk

APPEARANCES: **Reptg. Resident Power, LLC and
PNE Energy Supply, LLC:**
Christopher H. M. Carter, Esq. (Hinckley...)
Daniel M. Deschenes, Esq. (Hinckley Allen...)

Reptg. Residential Ratepayers:
Rorie E. P. Hollenberg, Esq.
Stephen R. Eckberg
Office of Consumer Advocate

Reptg. PUC Staff:
Suzanne G. Amidon, Esq.
David Shulock, Esq.
Steven E. Mullen, Asst. Dir./Electric Div.

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

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NOTE TO READER: The above page numbers in bold are contained within the transcript noted as "**CONFIDENTIAL & PROPRIETARY**"

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

CHAIRMAN IGNATIUS: Welcome, everyone.

I would like to open the hearing in two dockets being consolidated for proceedings today, Docket DE 13-059, Resident Power Natural Gas & Electric Solutions, and Docket DE 13-060, PNE Energy Supply. This proceeding was scheduled just on Wednesday at the request of the two Companies for a prehearing conference. And, so, an order that was issued on March 13th, this week, scheduled a prehearing conference for 10:00 this morning. And, we understand that the parties and Staff have been in discussions on some of the procedural matters, which we always welcome. So, we're starting a little late, because of the opportunity for people to discuss informally some of the things that presumably are to come before us now.

What I'd like to do is begin with appearances, and then hear from all of you your proposals on any procedural matters that we should address, either for today's proceeding or for when we get to the hearing on the merits in these matters. We have a couple of pending motions that we can hear argument on and address. And, there may be, I don't know if there's a proposed procedural schedule, any other details, but we'll get to all of that.

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1 So, let's first just begin with
2 appearances. And, I'll look first to Mr. Carter.

3 MR. CARTER: Good morning. I'm Chris
4 Carter, and I'm here with my colleague, Dan Deschenes.
5 I'm also here with Gus Fromuth and Bart Fromuth. And, we
6 are here on behalf of Resident Power and PNE.

7 CHAIRMAN IGNATIUS: And, both of you
8 together are representing both Companies?

9 MR. CARTER: Yes, ma'am.

10 CHAIRMAN IGNATIUS: Thank you.

11 MS. HOLLENBERG: Good morning. Rorie
12 Hollenberg and Stephen Eckberg here for the Office of
13 Consumer Advocate.

14 CHAIRMAN IGNATIUS: Good morning.

15 MS. AMIDON: Good morning,
16 Commissioners. I want to thank you for your forbearance,
17 allowing us to discuss matters with the Companies'
18 attorneys this morning. My name is Suzanne Amidon. I'm
19 the Staff attorney on this docket, along with David
20 Shulock, to my left, who's my co-counsel. To his left is
21 Steve Mullen, the Assistant Director of the Electric
22 Division.

23 CHAIRMAN IGNATIUS: Thank you. We have
24 folks in the back. Is there anyone else who is appearing

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1 today and participating?

2 (No verbal response)

3 CHAIRMAN IGNATIUS: All right. Then,
4 why don't we begin, I guess, if you have a -- if any of
5 you have a recommendation on what order to take things up
6 in today or anything that, if you have anything to report
7 from your earlier discussions this morning, we're all
8 ears?

9 MS. AMIDON: Well, I'll begin with where
10 Staff is at this point. Some of the discussion we had
11 this morning did divert from process, and, in that sense,
12 I think you might hear different proposals between myself
13 and the Companies' attorneys. We did agree on the
14 following: We did agree to exchange witness lists; we did
15 agree to exchange a list of exhibits, to the extent that
16 we are aware of them at this point, but reserve the right,
17 for example, to supplement the exhibits at hearing, if
18 necessary. Staff filed a memorandum, as you know. We do
19 not plan to file prefiled testimony or other memorandum,
20 unless directed by the Commission. But there are two
21 provisos that we have.

22 Staff was delivered discovery yesterday.
23 And, as you know, under the Commission rules, Staff has --
24 well, any party to a proceeding has ten calendar days --

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1 strike that -- ten business days to respond to discovery.
2 So, we would -- given that, and the fact that there was a
3 filing this morning, which, to be quite honest, I haven't
4 read, I believe it was a memorandum on burden of proof, we
5 would have ten days to respond to that as well. So, at
6 this point, with things unresolved, we feel that moving
7 ahead with the show cause hearing next week may not be
8 possible.

9 Having said that, Staff is open to
10 further discussions with the Company, if we have the
11 appropriate go-ahead from our staff working on this, that
12 is Mr. Mullen and Amanda Noonan, who is not here today.

13 A couple of areas of concern is whether
14 the suspension for PNE should continue through the
15 conclusion of the show cause hearing, and then until such
16 time an order is issued from that or if there is a
17 settlement agreement, until such time that that is
18 approved. And, I believe at this point Staff's
19 recommendation, unless persuaded otherwise or agreed to
20 otherwise with the Company, would be "yes".

21 The second issue that we have is, we do
22 have some additional discovery ourselves that we would
23 like to be able to serve on the Companies. And, let me
24 just check my notes one more time. One final point. We

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1 wanted to recognize that, pursuant to Commission Rule
2 203.23(c), the rules of evidence don't apply to
3 proceedings before the Commission. So, in that sense, we
4 wanted just to -- I neglected to mention that to the
5 Companies' lawyers this morning. And, I just wanted to
6 put that on the record so that that was clear.

7 I do have one final thing. And, that
8 is, in the Staff's objection to the Motion for
9 Confidential Treatment, there was an Exhibit 1, which I
10 neglected to attach to the objection. I have copies of it
11 today, which I will file formally. The exhibit is merely
12 a printout of a page from Resident Power's website. If
13 you would like it now, I could provide it to you now. Or,
14 I will -- and I am going to formally file it anyway,
15 because I neglected to add it. I can provide it to you
16 now, if you wish, or --

17 CHAIRMAN IGNATIUS: I haven't even -- a
18 more fundamental question, I didn't realize there was an
19 objection filed. So, I'll need all of it. But it's
20 probably working its way through the -- through the filing
21 system.

22 CMSR. HARRINGTON: I have the motion,
23 but not the objection.

24 CHAIRMAN IGNATIUS: So, why don't you

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1 file all of it.

2 MS. AMIDON: Okay.

3 CHAIRMAN IGNATIUS: The replacement or
4 the additional page --

5 MS. AMIDON: Okay.

6 CHAIRMAN IGNATIUS: And, Commissioner
7 Scott always has everything.

8 MS. AMIDON: Okay.

9 CHAIRMAN IGNATIUS: And, it was filed
10 yesterday, at 1:30. So, I apologize for not having it
11 with me.

12 MS. AMIDON: Okay. But I will file this
13 formally.

14 CHAIRMAN IGNATIUS: Why don't we see
15 whether we're going to take that up today or not.

16 MS. AMIDON: Well, with respect to that,
17 I mean, we did talk to the Company briefly this morning.
18 And, Attorney Deschenes represented that he was going to
19 make some kind of responsive filing this afternoon,
20 recognizing that there was some publicly available
21 information that was inadvertently redacted in his filing.
22 But I don't -- I don't understand that all the issues that
23 were raised in our objections are resolved. And,
24 certainly, he's entitled to make his own argument in that

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1 regard.

2 So, finally, just to let the Commission
3 know, the Staff hopes to be able to call PSNH and
4 FairPoint as a witness, because we'll -- while PSNH has,
5 and that's Public Service Company of New Hampshire for the
6 record, while Public Service Company of New Hampshire has
7 indicated to us that they are willing to accept a notice
8 by letter to be Staff's witness, we will most likely have
9 to do a subpoena for FairPoint, which may also make it
10 very difficult to move ahead with a hearing next week.

11 So, that's where we are. And, I know
12 that's probably not as far as the Commission would like us
13 to have gone, but we did, as I said, have good discussions
14 with the Companies' attorneys this morning, and expect
15 that we will continue in that regard.

16 CHAIRMAN IGNATIUS: That does sound like
17 quite extensive conversations and appreciate that.
18 Mr. Carter, Mr. Deschenes, do you want to respond to your
19 understanding of anything that Ms. Amidon described, but
20 also other issues that you want to bring forward on sort
21 of procedural matters as we get ready for today and the
22 hearing on the merits?

23 MR. CARTER: Thank you. Yes. First,
24 thank you for your patience this morning. We did make

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1 some ground this morning. I'd like Attorney Deschenes to
2 address the confidential treatment. It's my belief that
3 almost all those issues have been resolved, with the
4 exception of some documents that have been previously
5 granted confidential treatment. Dan, do you want to?

6 MR. DESCHENES: Yes. Briefly, the issue
7 there, and the representation I made to Attorney Amidon
8 this morning was, to the extent she has pointed out issues
9 which have already been publicly disclosed. I will make
10 that determination when I go back to the office. And,
11 obviously, if it's already been publicly disclosed, I will
12 reproduce, and I think specifically we're talking about
13 the materials that are at Tab 1. Most of the other issues
14 I think we're in agreement on, that customer information
15 and the financial data that was specifically requested are
16 confidential.

17 The only issue that I did flag with
18 Attorney Amidon, and I'm happy to address it with her
19 after the hearing, is Request Number 11, which requested
20 certain documents with respect to the FairPoint/PNE
21 transaction. And, we have not reached agreement on that.
22 We have a position that it's confidential. What I did
23 pledge to Attorney Amidon is that I would revisit the
24 issue and see if it could be resolved.

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1 CHAIRMAN IGNATIUS: All right. Then, it
2 sounds like it would be more efficient to wait for a
3 further response from you, after you've had a chance to
4 check a couple of those things and discussions, and then
5 before ruling on the Motion for Confidential Treatment?

6 MR. DESCHENES: And, I'd be happy to
7 inform, by the end of the business day today, whether or
8 not any of those specific issues, 1 through 11, need to be
9 addressed.

10 CHAIRMAN IGNATIUS: All right. And, in
11 the Motion, am I right in that there's even a request to
12 protect some things that are taken direct quotes from the
13 order that we issued and that sort of thing, clearly,
14 that's already public. There would be no reason that that
15 would be protected.

16 MR. DESCHENES: I'm not quite certain
17 what you're referring to, but I agree with the concept
18 that you're referring to.

19 CHAIRMAN IGNATIUS: Okay. Why don't you
20 go back and take a look and make sure that -- we try to
21 find that right balance between protecting business
22 information that in a competitive market should be kept
23 protected, and the fact that you also deal with a
24 regulator shouldn't force all of your information to be

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1 made public, at the same time not protect things that
2 they're either already made available or there is really
3 no basis for confidential treatment. So, I appreciate
4 your effort to fine-tune it a little bit.

5 MR. DESCHENES: Thank you.

6 MR. CARTER: Thank you. In terms of the
7 proceedings for next week, PNE, which, as the Order of
8 Notice indicates, is under voluntary suspension, or two
9 issues, there is the ISO cure, and then voluntary
10 suspension --

11 (Court reporter interruption.)

12 MR. CARTER: Cure the ISO default, and
13 the voluntary suspension pending the outcome of the show
14 cause hearing. PNE anticipates curing the ISO default
15 next week. PNE and Resident Power will be prepared to
16 proceed on Wednesday. And, under the circumstances,
17 including the voluntary suspension, they strongly appeal
18 to the Commission to conduct the hearing at the scheduled
19 date. What we believe to be inaccurate press reports of
20 the Companies' businesses and the events that gave rise to
21 the ISO default were, in our belief, inaccurate, they have
22 led to a severe harm to the business. We would like to
23 address the allegations made in the Staff Recommendation
24 Report. We're going to be prepared to do that. And, so,

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1 we would request strongly that the hearing remain on
2 schedule.

3 Attorney Deschenes mentioned, we've been
4 trying to work with the Staff to clarify any issues
5 regarding confidentiality. And, I think that's a matter
6 that reasonable minds can resolve without further input
7 from the Commission.

8 In terms of witness lists, we will be
9 prepared to exchange preliminary witness lists as early as
10 this afternoon, understanding that there may be some
11 subsequent revisions to that.

12 Regarding the exhibits, a substantial
13 amount of the documents that the Companies would seek to
14 introduce at the hearing are part of the material that has
15 been supplied in response to the data requests. There's
16 additional material, particularly with respect to e-mail
17 communications going back and forth between the Staff and
18 Resident Power and Power New England, dating back to the
19 time period even prior to the registration of these two
20 companies. That kind of e-mail and documents will also be
21 part of our exhibits. And, we expect, probably by the end
22 of the day on Monday, to be able to provide an exhibit
23 list. Given the nature of those documents, many of them
24 are already in the possession of Staff, since they're

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1 e-mail communications between my clients and different
2 Staff members.

3 We did file yesterday a discovery
4 request. We did that, however, not, and I expected that
5 the Staff will point out that, under the rules, there is
6 ordinarily ten days to provide a response to that kind of
7 information. Of course, this is not an ordinary
8 situation. The Commission has scheduled a hearing within
9 a very brief period of time from its Order of Notice. I
10 would submit that the information that is the subject of
11 our discovery request is information that we should be
12 entitled to receive, because it relates directly to
13 allegations that Staff made in its Recommendation Report,
14 including, for example, the allegation that there were any
15 number of consumer complaints. The fact of a consumer
16 complaint is a predicate for some of the jurisdictional
17 issues here. And, I submit that, as a matter of due
18 process, we should be entitled to see whether there were
19 complaints and the content of them.

20 There are also general allegations in
21 the Staff Recommendation, some of which do not appear in
22 the Order of Notice, but we feel color the proceeding.
23 And, we've asked for clarity, in terms of what Staff
24 meant. For example, when they alleged that my clients

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1 tried to "enroll" a commercial customer after the ISO
2 suspension. And, we'd like to know where that allegation
3 comes from.

4 So, although the PUC rules do
5 contemplate, in the ordinary course, a ten-day period for
6 responding, and, as Attorney Amidon pointed out, a ten-day
7 period to respond to a motion, this is not the ordinary
8 case. And, I believe that they would -- and we discussed
9 that before the hearing today. And, I think the
10 information we've requested is not so broad in scope or so
11 unanticipated that it can't be provided very promptly.
12 Much in the same way that we've done our best to turn
13 around the extensive quantity of information that the
14 Commission asked at the recommendation of the Staff.

15 CHAIRMAN IGNATIUS: Is there a reason
16 that you didn't make the request earlier than yesterday?
17 I agree this is not a usual case, but the things you've
18 just described were set forth in the Staff memo, you know,
19 weeks ago, and could have given rise to a request earlier
20 than yesterday.

21 MR. CARTER: Well, there are two answers
22 to that, madam Chairwoman. First, my firm became involved
23 in this case a week and a half ago. Now, that's not an
24 excuse, but I'm providing that information to you as a

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1 matter of context. Secondly, we were devoting enormous
2 resources to responding to, in very short order, to the
3 voluminous information requests that Staff requested the
4 Commission to make. And, we appreciated your brief
5 extension of time. We identified that as the most
6 imperative issue.

7 Third, I did not anticipate the
8 resistance that we faced from Staff in trying to work
9 through these issues. I contacted the Staff last Thursday
10 -- Thursday, asking whether they would agree to this
11 conference; they objected, for reasons that still have not
12 been made clear to me. We asked, when they did object, if
13 they could explain why they objected, and whether they
14 would be willing to sit down with us to try to work out
15 cooperatively a schedule to go forward; and they were not
16 willing to do that either. We asked for this conference
17 because we were hoping that the Commission would help us
18 in getting clarity on some of these issues.

19 I can represent, based on what's been
20 said to me this morning, that the Staff appears to take
21 the position that some of the discovery we're asking for
22 they're not even required to provide. So, I think we may
23 need some guidance from the Commission.

24 So, I can tell you that, in the very

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1 short period of time since the Order of Notice was issued
2 on Friday, the 28th of February, we're now -- that was two
3 weeks ago, we have been working aggressively to provide
4 the information that the Commission has requested, to deal
5 with some very complex legal issues, like burden of proof.
6 We've made overtures repeatedly with Staff to try to
7 resolve those issues among ourselves. And, we're coming
8 to the Commission as, really, as a matter of last resort.

9 We have filed a motion on the burden of
10 proof. And, we did only file that this morning, for many
11 of the same reasons that I just described. We did try to
12 arrange an opportunity to deal with that issue with Staff
13 last Thursday. They directed us to the Wilton case that
14 we discussed, but, beyond that, there was not an interest
15 in trying to work through that. And, I filed that today,
16 so I'm not expecting the Commission would be issuing an
17 order this morning, but it is an issue that we believe
18 needs to be addressed before the hearing begins, and we
19 believe that it can be. And, you know, it could easily
20 have been filed as a motion *in limine*, if you will, for a
21 pre-conference ruling on a legal issue. And, again, we
22 were kind of working without the guidance of a pretrial
23 conference, which I note is typically ordered in cases
24 like this.

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1 But, in terms of the burden of proof,
2 we'd be happy to address that briefly now, and further
3 later. This is a -- this case is very much unlike the
4 Wilton decision that Staff, I expect, will say "provides
5 guidance". In that case, the overriding allegation was
6 that a public utility had failed to comply with a 1999
7 Settlement Agreement. And, in that respect, the show
8 cause order and the show cause hearing was very much what
9 you might see, for example, in a superior court action,
10 where a defendant, civil or criminal, if you will, fails
11 to pay a fine or pay a damages award consistent with a
12 prior court order. There's already been an adjudication,
13 if you will, and the question is, "Has the defendant
14 complied with the sanction or decision?"

15 Here, as that Staff Recommendation
16 Report acknowledges, there are many complicated facts at
17 issue here. Not all of them, there are some issues which
18 are relatively discrete. We've discussed those and we've
19 identified some of those in our response to the data
20 requests. But, particularly with respect to the
21 allegations of willfulness, and some of the more serious
22 allegations, which potentially would support the Staff's
23 request for a severe sanction, to include loss of
24 registration, we believe that, in a case like this, the

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1 burden of proof should fall on the claimant, if you will,
2 the PUC Staff, as a matter of due process.

3 So, not only is this case very different
4 from the Wilton decision, in terms of what the fact at
5 issue, compliance with a settlement agreement, versus a
6 very complicated factual history which needs to be
7 resolved, we pointed out that some of the legal authority
8 that supported the Wilton decision has since changed. In
9 particular, the federal cases cited in that, in the Wilton
10 decision, have been overruled in relevant part by the
11 United States Supreme Court more recently, in which the
12 Supreme Court affirmed that the allegation falls on the
13 claiming party to meet their burden of proof.

14 To hold otherwise, the complexity of the
15 allegations made in the Staff Report, and the lack of any
16 clear delineation between the list of rules that are cited
17 in the beginning of the Report, and then a large block of
18 facts, and then a conclusion of the recommended show cause
19 hearing, as a matter of due process, I would submit that
20 we are entitled to put the Staff to their burden of
21 proving by a preponderance of the evidence that the
22 conduct that they claim occurred did occur, did occur.

23 And, I understand that we just filed
24 this this morning, and I appreciate the Staff may want

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1 more time to address this. But this will -- this is an
2 issue, I submit, that needs to be resolved, would have to
3 be resolved in this very, and I think we all agree, is an
4 unusual proceeding. Thank you.

5 CHAIRMAN IGNATIUS: Thank you. Yes,
6 Commissioner Harrington.

7 CMSR. HARRINGTON: Yes. Just a
8 follow-up on that, on the Motion for Burden of Proof.
9 Forgetting the dates just for a second, is it the
10 Companies' position that that issue needs to be resolved
11 before the start of the hearing?

12 MR. CARTER: Yes, sir, and for a really
13 good, practical reason. It's going to dictate how the
14 entire proceeding goes forward. In other words, if, by
15 analogy, if this were a civil enforcement case before the
16 Superior Court, or other cases, adjudicative proceedings
17 before the Commission, the Staff would go first, it would
18 present its witnesses, and then we would have a chance to
19 cross-examine, and then present our case, and then there
20 might be an opportunity for rebuttal. I would expect
21 that, if the Staff's position on burden of proof prevails,
22 the nature of the proceeding itself will be far different.

23 CMSR. HARRINGTON: So, if, for whatever
24 reason, the ruling was not made prior to the scheduled

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1 hearing, you would propose that the hearing be delayed, if
2 necessary, in order to get the ruling made first?

3 MR. CARTER: I would -- well, --

4 CMSR. HARRINGTON: I'm not saying what
5 you preferred, but I'm just trying to get --

6 MR. CARTER: That relates back to where
7 I started, in terms of the -- there is the ISO, the cure
8 of the ISO, which PNE believes will be imminent. And,
9 then, there's been the voluntary suspension pending the
10 outcome of the show cause hearing by PNE. Resident Power
11 is not under any suspension. However, it is operating
12 under the shadow of the allegations raised in the Staff
13 recommendation regarding slamming.

14 And, until those issues can be resolved,
15 in essence, Resident Power is operating under a sword of
16 Damocles, if you will. And, PNE is in purgatory, and that
17 both Companies risk the loss of their viability by the
18 delay.

19 In the event -- Attorney Amidon I think
20 began to address what possibly could be a solution, which
21 is, if the ISO was cured, and if the decision is made that
22 it would be difficult to proceed with a hearing, or
23 "preferable", I should say, I think we all can agree that,
24 you know, a hearing can continue next week, just a matter

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1 of whether, you know, what's required for that to occur.
2 There's no -- it's not an impossibility. However, we
3 would entertain the idea of, pending the cure of the ISO,
4 which is not a matter for the Commission, it's a matter
5 for my client, to, if they were permitted to continue to
6 service customers, certainly in full compliance with all
7 of the rules, and with close consultation with the Staff
8 and with the OCA, --

9 CMSR. HARRINGTON: So, you're proposing
10 that PNE would be able to take on new electric customers?

11 MR. CARTER: Yes.

12 CMSR. HARRINGTON: Okay.

13 MR. CARTER: With respect to Resident
14 Power, I appreciate that the issue of slamming has been
15 the subject of a prior docket, and that issue remains
16 unresolved. And, one of our paramount objectives in this
17 proceeding is to demonstrate that, as a factual matter,
18 that allowing Resident Power to port its former customers
19 does not constitute slamming. And, so, we would like to
20 have the opportunity to present that evidence starting
21 next Wednesday.

22 It would be much easier for Resident
23 Power to deal with a delay of this proceeding, if there
24 were some ability to resolve that issue, which, at this

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1 point, is really preventing it from doing any business.

2 So, I'd be happy to answer any other
3 questions, but thank you very much.

4 CHAIRMAN IGNATIUS: Thank you. I want
5 to get around to everyone on a lot of issues --

6 (Court reporter interruption.)

7 CHAIRMAN IGNATIUS: -- that we need to
8 address and hear from each of the parties on. So, let's
9 turn to the OCA, and you can take them on in any order
10 that occurs to you.

11 MS. HOLLENBERG: Thank you. Thank you.
12 Just would suggest that there possibly is some recent
13 precedent at the Commission with regard to the burden of
14 proof. In the Northern show cause case, which was DG
15 11-196, I think the Commission made a determination in
16 that docket, I don't recall specifically what the ruling
17 was, but that might be a source of information for the
18 parties and the Commission.

19 The Companies did provide me with a
20 confidential copy of the response to the Commission that
21 they filed. So, I wanted you to know that. That is
22 mentioned in the Staff's objection to the Motion for
23 Confidential Treatment. So, we do have a confidential
24 version of the Companies' filing at this time.

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1 CHAIRMAN IGNATIUS: Are you taking about
2 the discovery response?

3 MS. HOLLENBERG: Yes, ma'am.

4 CHAIRMAN IGNATIUS: Thank you.

5 MS. HOLLENBERG: And, we do support,
6 however, continue to support the Staff's motion --
7 objection to the Motion for Confidential Treatment, and
8 are looking -- we do believe that, given the discussions
9 this morning, that it will be likely that we will resolve
10 those issues with the Companies.

11 At this point, I don't anticipate having
12 a witness or any type of active role of putting on a
13 direct case in this proceeding. And, we don't really have
14 a position yet on the motion for the burden of proof. I
15 will take a look at that. I got that this morning.

16 And, I guess I'm not going to take a
17 position on the dispute that's going on right now, about
18 whether or not the hearing -- I think the primary issue is
19 whether or not the hearing will occur next week. And, so,
20 to the extent that we can resolve that issue as soon as
21 possible, that, obviously, would be helpful, in terms of
22 preparation for the hearing.

23 CHAIRMAN IGNATIUS: Do you have a
24 position on whether it should go forward Wednesday or be

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1 extended?

2 MS. HOLLENBERG: I guess I -- I
3 understand the concerns that the Company has raised about
4 a delay. And, I hear what they're saying about needing to
5 have information before the hearing. I don't -- they did
6 propound a discovery request on the OCA, there's one
7 question. I don't anticipate having any difficulty
8 responding to that by Monday. But I do recognize that
9 Staff had a good number of more questions than we did.

10 And, in terms of whether or not we would
11 agree to delaying the hearing on the condition that the
12 Company's voluntary suspension, the PNE's voluntary
13 suspension is lifted, presuming curing the default at ISO,
14 I guess my only concern is maybe, to the extent that it's
15 possible, maybe there might be an opportunity for some
16 additional surety in the interim, just to have as a safety
17 net for customers.

18 I worry about the -- I worry about
19 customers' perception that the suspension would be lifted
20 during an investigation, given the allegations, without
21 something as a -- something additional there. And, I
22 don't know exactly whether or not that's provided for by
23 the rules, but perhaps that's something that we can talk
24 about with the Companies and Staff.

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1 CHAIRMAN IGNATIUS: So, and I realize
2 you're sort of thinking as you go here, --

3 MS. HOLLENBERG: Uh-huh.

4 CHAIRMAN IGNATIUS: -- but would the
5 thought be that, if there were an ISO agreed upon
6 resolution that lifted the suspension status at ISO, that
7 you might also advocate for an additional New Hampshire
8 PUC surety, some escrowing of some funds for the sake of
9 New Hampshire customers?

10 MS. HOLLENBERG: Something, off the top
11 of my head, that's just -- it seems that it would be
12 appropriate, in light of the allegations and the fact that
13 there's a proceeding pending, that there would be a signal
14 to the public that, you know, it's just a little bit more
15 than "business-as-usual", I guess. There's a little more
16 protection than business-as-usual. But there's still this
17 pending proceeding, and the allegations haven't been
18 decided, so, we're going to allow them to continue to
19 operate, so long as the financial issues have been
20 resolved.

21 CHAIRMAN IGNATIUS: All right. And,
22 we'll come back to the Companies later for -- if you have
23 any reaction to that, I don't know if that's something
24 that was floated in the --

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1 MS. HOLLENBERG: I mentioned it, but it
2 really was off the top of my head.

3 CHAIRMAN IGNATIUS: And, when we get
4 back to it, I'll be curious, I meant to ask you before,
5 when you said the "ISO cure is imminent", what that means,
6 put a little flesh on that one, but we'll come back to
7 that.

8 Anything else from the Consumer
9 Advocate?

10 MS. HOLLENBERG: Not that I can think
11 of. But, if you have a specific question for me about --
12 about the case, I apologize, I'm relatively new to the
13 case as well.

14 CHAIRMAN IGNATIUS: All right. Staff,
15 response to any of the things that we have just been
16 through or any further detail as it sort of develops as
17 we're going here?

18 MS. AMIDON: Yes, we do. While we heard
19 this morning that, from Attorney Deschenes, that he was
20 going to attempt to respond to some of Staff's concerns
21 about the redacted material that they provided in response
22 to the Commission's order, until such time as we see
23 those, we reserve our right to comment on whether or not
24 there -- it has satisfied the objection.

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1 Regarding Mr. Carter's indication that
2 he wanted discovery, I think he said he wanted discovery
3 of e-mail going back in time, or perhaps he has access to
4 them otherwise. As you know, we -- the PUC changed over
5 to the Granite system, I forget how long ago that was, two
6 months ago, three months ago. So, we don't have access --
7 all that e-mail was -- prior to that I think was -- we
8 don't have access to it, because I think all the e-mail
9 prior to the conversion to this new IT system, all of
10 that's no longer available to us. So, I don't know what
11 Mr. Carter plans to do about that.

12 (Atty. Amidon and Atty. Shulock
13 conferring.)

14 MS. AMIDON: Okay. And, Attorney
15 Shulock just reminded me, we would probably need copies of
16 them, if he's -- but, if he's going to introduce them as
17 an exhibit, then I guess we would have copies.

18 We still reserve our right to ten days
19 to respond to the motion that was filed this morning and
20 to the discovery that was filed yesterday. And, one of
21 the compelling reasons is we don't have an attorney who
22 can work over the weekend to prepare the DRs. But, more
23 importantly, Ms. Noonan is not available until Monday.
24 So, it's just virtually impossible for us to do any

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1 expedited turnover of discovery, and we would still
2 request the ten days.

3 There was some reference that was made
4 to "slamming". I don't believe the Staff's memorandum
5 that was filed with the Commission mentioned "slamming".
6 So, I'm not sure why that was mentioned at this hearing
7 this morning.

8 And, finally, insofar as this proposal
9 to let PNE come and do business once its suspension at the
10 ISO is removed by curing its default for, I don't know if
11 it was for billing purposes, for financial assurance
12 purposes, or for other issues related to the billing
13 attachment to the ISO tariff, the argument has been made
14 that they would -- that, once that suspension at the ISO
15 is lifted, that they could continue -- that they could
16 resume doing business in New Hampshire. We haven't had a
17 chance to discuss that with Staff. And, if you wanted an
18 answer this morning, we would have to take a break to
19 discuss that separately with Staff, Mr. Mullen.

20 And, if there are any additional
21 questions that you have, I'd be happy to answer them.

22 CHAIRMAN IGNATIUS: That's fine. I am
23 curious to know, there were a lot of comments that
24 Mr. Carter made regarding Staff's position on burden of

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1 proof, but I don't know if that, in fact, is Staff's
2 position on burden of proof. And, so, although you may
3 not have had a chance to digest the motion filed today,
4 you know, it all relates to the issue of what is the
5 appropriate burden of proof. Does Staff have a position
6 thus far?

7 MS. AMIDON: Well, just to -- I didn't
8 want to get into a "he said/she said", but to provide you
9 some background on that. When Mr. Deschenes and
10 Mr. Carter, last Thursday, or was it Friday? I think it
11 was Friday. Mr. Shulock was out of the office, I was in
12 the office. And, apparently, Mr. Deschenes attempted to
13 contact Mr. Shulock, and ended up sending us an email
14 saying "would we consent to the motion for the prehearing
15 conference?" I talked with Staff, and Staff -- and one of
16 the issues that they raised -- he raised in his e-mail was
17 "burden of proof", and I was familiar with the Wilton
18 case. So, I discussed with Staff. Staff conveyed their
19 position that they didn't think a prehearing conference
20 was necessary. And, I conveyed that to him. And, at the
21 same time, I suggested that he look at that case. It was
22 merely one example where I knew that the Commission had
23 previously ruled on it. And, out of a matter of courtesy,
24 I was just trying to refer it to him to see if that might

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1 help him in determining whether or not we needed to have a
2 prehearing conference to discuss the burden of proof. So,
3 that's how all that came about.

4 So, I hadn't looked at that case. I
5 don't think the burden of proof -- well, I don't think I
6 could really comment. I have not read the motion that was
7 filed this morning. I was preparing for the pre-meeting
8 with the attorneys for the Companies. And, so, that's why
9 I asked for the ten days to respond, because we -- I need
10 to examine the arguments that they bring. And, I'm not
11 familiar, if they -- he referred to some Supreme Court
12 cases or federal cases, I have not reviewed those. So,
13 I'm not sure that they would pertain to a process before
14 the Commission, because, as I said, the Commission is a
15 quasi-judicial agency and doesn't necessarily adhere to
16 all of the same strictures as a court, but I would want a
17 chance to look at that.

18 CHAIRMAN IGNATIUS: All right.
19 Commissioner.

20 CMSR. SCOTT: Thank you. I understand
21 you'd like ten days, and I digested that. I was curious
22 what your reaction would be to, we've, obviously, noticed
23 and have scheduled both the 21st -- excuse me, the 20th
24 and the 22nd, I believe, for hearings, I don't know how

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1 long this would take. But, if, instead of the -- I'm just
2 thinking out loud, obviously, but, instead of the
3 Wednesday next week for the beginning of the hearing, we
4 did the Friday, do you think that that extra time would
5 allow you to do what you need to do?

6 MS. AMIDON: I will note that on your
7 schedule and on my schedule is a hearing on Tuesday
8 morning. So, whether I could do that, I would have to
9 work with Mr. Shulock. And, so, until we have a chance to
10 discuss that, I wouldn't be able to answer you. I
11 apologize.

12 CMSR. SCOTT: Okay.

13 CHAIRMAN IGNATIUS: All right. Why
14 don't we hear if the Companies have any help for me on
15 what the "ISO cure being imminent" really means, to the
16 best of your understanding? And, if the idea that
17 Attorney Hollenberg threw out is just sort of a concept,
18 without a lot of detail yet, but whether there's anything
19 there that could be useful as a way to both allow
20 something to move forward and some delay, if needed, in
21 reaching resolution of all of the issues on the hearing
22 themselves, any responses you have to that?

23 MR. CARTER: Thank you. We expect --
24 excuse me -- the cure, the ISO cure to be accomplished by

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1 Thursday of next week, possibly sooner.

2 CHAIRMAN IGNATIUS: And, help me,
3 because we see a lot of ISO notices, they're confidential,
4 so, I won't go into them, and ask you not to go into them.
5 But, if you can just describe generally what it is, if you
6 can do this without going into confidential matters, what
7 it is that's being cured? What restrictions the Company,
8 PNE, is under that will be lifted?

9 And, one other thing, if there's no way
10 to do this without going into confidential materials, then
11 we will mark the transcript a "confidential" portion,
12 we'll ask certain people to leave the room. So, let's
13 first do everything we can without confidential materials.

14 MR. CARTER: I believe I can answer your
15 question appropriately without going into confidential
16 material. I know that this is addressed in one of our --
17 I believe it was in response to Question Number 6 to the
18 data requests. PNE remains a member of the NE Pool. The
19 cure of the ISO default is a matter of restoring the
20 financial assurance account, which is simply a payment.
21 Once that payment is made, the ISO suspension, ISO default
22 is lifted.

23 CHAIRMAN IGNATIUS: And, has PNE worked
24 out with ISO, is it clear what the amount of payment would

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1 be required? Is that fairly straightforward to be able to
2 calculate?

3 MR. CARTER: Yes, it is. And, I'm sorry
4 to interrupt. It's designated in our answers to the data
5 -- the Information Request Number 6.

6 CHAIRMAN IGNATIUS: And, so, it's your
7 expectation that, by Thursday of next week, the 20 -- is
8 that the 21st?

9 MR. CARTER: That would be the 21st.

10 CHAIRMAN IGNATIUS: Or possibly earlier,
11 that payment will be made and the ISO suspension would be
12 formally lifted?

13 MR. CARTER: That is correct.

14 CHAIRMAN IGNATIUS: And, you said this
15 before, Resident Power has no ISO issues pending? There's
16 no suspension or --

17 MR. CARTER: Correct. That's correct.
18 Resident Power has not -- has been, let's say, on hold as
19 a result of the slamming allegations that Staff raised.
20 And, if I could point out that "slamming" is raised on
21 Page 5 of their recommendation, and it's raised again --
22 and that issue is picked up on Page 3 of the Order of
23 Notice. And, the issue, the "slamming" allegations are
24 integrally involved, entwined with all of the facts here,

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1 because the question of whether Resident Power's ability
2 to consummate the transfer of PNE customers to FairPoint,
3 or whether doing that after a certain date would
4 constitute "slamming", was central to a lot of the issues
5 which gave rise to the ISO default, the Staff's concern,
6 their recommendation and Report and what brings us here
7 today.

8 And, it's that allegation of "slamming",
9 which is, again, preventing right now some large number of
10 Resident Power customers, who are on default service with
11 PSNH paying higher rates than they would if the porting
12 over to FairPoint had been completed as Resident Power,
13 FairPoint, and, up to a certain point, Staff had
14 attempted. PSNH objected. I note that, in a Footnote 4
15 of a supplemental objection filed by PSNH in docket 295,
16 they mapped out their theory of "slamming", which was then
17 presented by the Staff. We need to have that issue
18 resolved, because, otherwise, the Company will -- its
19 business will fail, because it's backed into a corner and
20 can't do anything.

21 We don't believe that completing the
22 transfer of those customers to FairPoint at a lower rate
23 is "slamming". We believe that we can -- we will show or
24 present evidence in an argument which we believe will

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1 convince the Commission that the aggregation agreement
2 between Resident Power and those customers remain valid,
3 and that a transfer should be allowed to continue for the
4 benefit of the customers. The only person that's
5 benefiting by not allowing it, to be blunt, is PSNH.

6 CHAIRMAN IGNATIUS: All right. Well,
7 we'll get to all of that, I'm sure. Let me ask you a
8 couple of other questions. First, Commissioner
9 Harrington.

10 CMSR. HARRINGTON: Yes, just before we
11 left this issue, on the scheduling part of it. Do you
12 need the answers to the discovery from Staff prior to the
13 start of the hearing? Is that mandatory that you get all
14 of those answers before we can start the hearing?

15 MR. CARTER: Yes. And, if I could just
16 expound on that just a bit. The Staff recommendation
17 asked for a hearing, and I'll quote, "as soon as
18 practicable", and that's at Page 7, and the Commission
19 obliged. The Staff asked that we respond to 11 voluminous
20 data requests, and we obliged. The Staff opposed this
21 conference, but the Commission granted it to us. I
22 presume that, if we had not had this conference, we would
23 have been off to the races next Wednesday.

24 Again, I don't want to repeat myself,

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1 but the information that we requested is what I -- we
2 submitted very narrowly tailored requests. As Attorney
3 Hollenberg mentioned, we submitted a total of one request
4 to the OCA, to find out if there were, as Staff alleged,
5 these 84 complaints filed? And, thank you for the -- I
6 would like to address very briefly the issue of
7 correspondence. What we have --

8 CMSR. HARRINGTON: Could you just -- I'm
9 just trying to get the answer to the question.

10 MR. CARTER: Sure.

11 CMSR. HARRINGTON: So, what you're
12 saying then, and just so we're clear, that it's your
13 position that you need to have the Staff answer the
14 discovery questions prior to the start of the hearing.
15 And, how many questions are involved?

16 MR. CARTER: I believe we submitted four
17 to the Staff.

18 CHAIRMAN IGNATIUS: Yes. We haven't
19 seen --

20 MR. CARTER: I stand corrected, eight.
21 Eight. Predominantly, they asked that -- they're
22 duplicative to a certain extent with what we submitted to
23 the OCA. So, if they're produced by the OCA, that's taken
24 care of. We asked for them to provide us with the

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1 evidence, which they apparently already have, we asked
2 them to substantiate -- provide evidence to substantiate
3 some of the allegations in their recommendation. I
4 wouldn't expect that, if they put those facts in the
5 recommendation, it would be much of a task to then provide
6 us with that same information.

7 We asked for, then perhaps the broadest
8 category is correspondence with PSNH, regarding PNE and
9 Resident Power and the issues that are before the
10 Commission. That correspondence would only have been
11 generated within the last month and a half.

12 CMSR. HARRINGTON: Just to follow up
13 then. So, it sounds like what you're saying is, you need
14 the ruling on the motion for the burden of proof, you need
15 the answers to discovery before a hearing can start. And,
16 you seemingly offered an optional course, and I want to
17 get this straight. And, that is, if you were to cure the
18 default with ISO and the suspension was lifted, that, if
19 you at that point were allowed to resume business in New
20 Hampshire, that you wouldn't object to delaying the
21 hearing past Wednesday? Or are you still -- or are those
22 two totally separate issues? I'm trying to get that
23 straight.

24 MR. CARTER: I'm not trying to dodge

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1 your question.

2 CMSR. HARRINGTON: No. Okay.

3 MR. CARTER: But if I could just answer
4 it like this. We very much want to go forward on
5 Wednesday.

6 CMSR. HARRINGTON: Okay.

7 MR. CARTER: I don't want to repeat
8 myself. One of the main threats that we face is the
9 voluntary suspension pending the outcome of the show cause
10 hearing, provided we're able to handle the ISO cure. An
11 agreement, as I've -- as we've all been discussing, to
12 allow PNE to continue operations, continue to serve
13 customers, would eliminate the -- in the short term, some
14 of the problems that PNE would face by a continuance of
15 the hearing. So, although we object to a continuance, we
16 would, as a fallback, as to PNE, we would need to have
17 something there to allow the Company to proceed.

18 As to Resident Power, the "slamming"
19 allegations have been left to resolution by the hearing.
20 And, until those are resolved, we are at risk of losing
21 our entire customer base. So, I'm afraid I don't have
22 anything more to offer on that point. We have -- we had a
23 collegial discussion this morning about procedural and
24 substantive issues, you know, perhaps continuing those

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1 discussions, which we intend to do, will allow for a
2 remedy that we could present to the Commission that will
3 address both the PNE and the Resident Power concerns.
4 And, that -- I hope that provides some clarity.

5 CHAIRMAN IGNATIUS: And, were you even
6 suggesting the possibility of going forward on Wednesday
7 on, if need be, going forward on Wednesday with Resident
8 Power, because some other arrangement is worked out
9 regarding PNE, or am I reading too much into the way
10 you've structured your sentences there?

11 MR. CARTER: Well, this is a combined
12 proceeding. So, I didn't mean to suggest we'd go forward
13 on Resident Power and wait on PNE. What I meant to say
14 is, the solution of allowing PNE to continue with
15 safeguards acceptable to everyone after the ISO cure would
16 remove the most immediate threat to PNE, but it would
17 still leave Resident Power staring in the face of these
18 "slamming" allegations that Staff had raised.

19 If Staff were to withdraw those, I
20 understand there is some question about whether that is
21 something they want to proceed with, that might remove
22 that obstacle.

23 CHAIRMAN IGNATIUS: Okay. Thank you.

24 MR. CARTER: Thank you.

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1 CHAIRMAN IGNATIUS: A couple of other
2 questions, I was looking back at your motion for a
3 prehearing conference, you had also asked for development
4 of what you called a "full procedural schedule". Is there
5 anything further on a procedural schedule you want to
6 address?

7 MR. CARTER: Thank you.

8 CHAIRMAN IGNATIUS: And, one other, I'll
9 just let you, I mean, work it in as you see fit. Is you
10 asked for the "opportunity for prehearing memoranda",
11 which isn't something we normally do. And, I don't know
12 if that's something you're also asking for in this case?

13 MR. CARTER: We think it would be very
14 helpful, to frame the issues for the Commission and to
15 provide for the more orderly, prompt adjudication of the
16 many issues that have been raised. And, so, we would,
17 appreciating it's not something that's ordinarily done,
18 this isn't an ordinary case, and I think that it would be
19 helpful to the Commission to understand what the facts
20 are.

21 And, as a matter of, you know, they
22 would, by necessity, they would be relatively limited in
23 length, given the time we have here. But I do think it
24 would be helpful for the Commission, and my client would

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1 appreciate the opportunity to, in advance of the hearing,
2 to respond to some of the very detailed allegations that
3 are contained in the Report, to help frame the issues more
4 appropriately before the hearing starts.

5 CHAIRMAN IGNATIUS: I guess I have a
6 couple concerns about that. One is, if we're trying to
7 accelerate to meet the Wednesday deadline, adding anything
8 else is problematic, it could be more easily granted with
9 a delay.

10 MR. CARTER: Uh-huh.

11 CHAIRMAN IGNATIUS: But I know that's
12 not what you want. So, I assume, between, if that were
13 the choice, to allow for the filing of the memoranda, but
14 a delayed schedule, you'd prefer to go forward and
15 jettison the memoranda, correct?

16 MR. CARTER: Yes.

17 CHAIRMAN IGNATIUS: Okay.

18 MR. CARTER: Perhaps we could have a --
19 if that is the decision, perhaps we could address the
20 issue of, for example, opening statements, and --

21 CHAIRMAN IGNATIUS: Yes. The other
22 thing is, we, I mean, we always hear arguments in
23 closings, either written or orally. We -- our interest is
24 to get as quickly as we can to real evidence, and

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1 testimony, real adjudication of facts, rather than
2 people's arguments about what the facts will mean when we
3 finally get around to hearing the facts, we'd rather just
4 move straight to that, and then give an opportunity for
5 closing arguments, to kind of summarize it, put it into
6 context, explain how it does or doesn't meet our rules or
7 statutes.

8 MR. CARTER: I understand. If you just
9 give me a moment. This is -- the Staff has submitted a
10 very, very detailed account of what it believes the
11 situation to be. As I -- as we noted in our motion this
12 morning, there is much more to be said and that needs to
13 be said to provide a more balanced account of both the
14 historic facts, "historic" meaning beginning with the
15 registration of PNE and Resident Power, and Staff's
16 involvement, understanding in the businesses and the
17 relationship. And, also, much more to be said about the
18 level of communication and cooperation and work that was
19 going on between my clients and Staff during the critical
20 period beginning with, you know, the last week or two of
21 January, leading up to the ISO default. And, we are -- we
22 find ourselves in the position here where we have a very
23 limited amount of time to prepare for a hearing that we
24 need to proceed with because of the -- the stage has

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1 already been set.

2 The Staff has had a full opportunity to
3 air its position through its Report, and our concern is
4 trying to make sure that, when we go -- that my client has
5 some comfort that, when we go forward with the hearing,
6 it's on an even playing field, where they're not facing an
7 uphill battle. That is the reason or -- and, I'm not
8 questioning the impartiality of the Commission or that you
9 prejudge the case, I'm only basing it on the written
10 filings in the docket. And, that was the reason why I
11 advocated or requested the opportunity to file, you know,
12 even a brief prehearing memoranda, so that the Commission
13 going into this proceeding has some idea or a further
14 appreciation that there's a lot more to this story than
15 one would ever get by reading the Staff recommendation.

16 CHAIRMAN IGNATIUS: All right.

17 MR. CARTER: That's it. Thank you.

18 CHAIRMAN IGNATIUS: Thank you.

19 Commissioner Scott.

20 CMSR. SCOTT: At the beginning of your
21 response regarding the ISO cure, you mentioned, if I
22 understood correctly, that we could look to the Staff Data
23 Request Number 6, your responses to that. And, I just
24 want to make sure we're on the same, for the package that

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1 at least I have on the Bench here, we don't have Tab --
2 there's no Tab 6. There's Tab 1 through 5, and then 7
3 through 11.

4 MR. CARTER: There's a narrative,
5 Commissioner, that --

6 CMSR. SCOTT: Okay.

7 MR. CARTER: -- which I -- I shouldn't
8 have used the word "tab", I apologize, I should have -- if
9 I did. I meant to say "in the answer to Question 6".

10 CMSR. SCOTT: I used "tab", you did not.

11 MR. CARTER: There is not a tab. There
12 are not 11 tabs, because not each answer required a
13 separate compendium of documents.

14 CMSR. SCOTT: Okay. So, it is -- thank
15 you. I just wanted to make sure we had everything we
16 needed.

17 MS. AMIDON: Commissioner Scott, just
18 for your information, it's in the text of the cover
19 letter.

20 CMSR. SCOTT: Thank you very much.

21 MS. HOLLENBERG: We actually don't have
22 that cover letter, if we could get that?

23 MR. CARTER: Absolutely. Sorry.

24 CHAIRMAN IGNATIUS: Commissioner

[REDACTED - FOR PUBLIC USE]

1 Harrington, a question?

2 CMSR. HARRINGTON: Yes. I want to ask a
3 question, and it's in the confidential section. So, I
4 want to try to avoid saying anything confidential. But
5 it's in your -- I don't know, what we're calling it, I
6 guess your response --

7 MR. CARTER: Yes.

8 CMSR. HARRINGTON: -- to the data
9 responses. And, on the second page, under the Section 6,
10 it's about how you plan on curing the financial default
11 with ISO-New England. And, you talk -- I'm not going to
12 use any of the numbers that are in here, but you talk
13 about different ways that you're going to be able to do
14 this. And, it seems like some of the dates you mention
15 here about getting some monies to help cure the response
16 are after next Thursday. So, am I missing something or --

17 MR. CARTER: The information that we
18 provided was our best understanding on the day we
19 submitted those.

20 CMSR. HARRINGTON: Okay.

21 MR. CARTER: I believe it was Tuesday.
22 The Company has been working full force to address these
23 issues. It's had success in doing so. And, I'm --

24 CMSR. HARRINGTON: So, you have --

[REDACTED - FOR PUBLIC USE]

1 excuse me. You have a high degree of confidence that next
2 Thursday the default will be cured?

3 MR. CARTER: Yes, sir.

4 CMSR. HARRINGTON: Okay. Thank you.

5 MR. CARTER: Or sooner.

6 CMSR. HARRINGTON: That answers my
7 question.

8 CHAIRMAN IGNATIUS: Ms. Amidon, do you
9 have more to add? Because I'll tell you what my hope is,
10 that we get anything else left that people needed to
11 mention on any of these issues, and this is unusual, we've
12 got so many things going at once, and we're just kind of
13 working our way around the room. And, then, we'll take a
14 brief caucus to discuss it and come back. So, what else
15 left that people needed to get back to us on in any
16 responses?

17 MS. AMIDON: Well, I don't want to get
18 into argument here. But, I think, first of all, I just
19 want to say, from Staff's concern, Staff's not concerned
20 about what Staff knew at what time. It's whether
21 customers knew what was happening to their accounts,
22 whether they were getting appropriate notices, and whether
23 they were being transferred to other suppliers without
24 their consent. But I did not correctly understand the

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1 issue regarding "slamming", and I'd like Mr. Shulock to
2 address that, if you would give us a chance?

3 CHAIRMAN IGNATIUS: Of course.

4 MR. SHULOCK: There are two slamming
5 issues here, and neither one is really involved in this
6 proceeding. The Resident -- in Staff's recommendation and
7 in the Commissioners' Order of Notice, slamming by
8 Resident Power is discussed in terms of the emergency
9 petition that Resident Power filed for a declaration that
10 it would not be committing slamming under certain
11 circumstances. And, the Commission found in its order
12 that the facts and circumstances were not definite and
13 concrete enough for the Commission to give that
14 declaratory judgment. Whether there's slamming here is
15 not an issue, it's not an allegation in the case, we
16 haven't cited a slamming violation rule for Resident
17 Power. Their choice not to aggregate customers and
18 proceed with their business is their own. In your Order
19 of Notice, you specifically stated that they could go on
20 and enroll customers and aggregate them and continue their
21 business. If they're choosing not to do so, and that's --
22 that's really of their own doing. I don't think that
23 that's a reason to rush to the hearing on Wednesday, that
24 they can't conduct business because of this pall hanging

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1 over their head.

2 The other slamming issue is a slamming
3 issue by PNE. That's a developing issue. It was not
4 brought forth in the Staff's recommendation in this case.
5 And, there were no rule violations noted associated with
6 slamming by PNE. But there is investigation going on in
7 that regard, but also that that's not involved in
8 Wednesday's hearing, so that that also is not a reason to
9 go to hearing on Wednesday.

10 And, in terms of lifting the suspension,
11 if they're able to cure at ISO, we would need to break and
12 talk to Staff about that, because it's not simply a matter
13 of lifting their suspension. _____
14 _____. They have not
15 registered to serve the C&I customers that they want to
16 enroll and serve beginning on Thursday. And, so, there
17 are some procedural things that they would have to do, in
18 addition to just having that suspension lifted. And,
19 Staff would want to have the opportunity to talk about
20 that.

21 CHAIRMAN IGNATIUS: _____
22 _____
23 _____?

24 **MR. SHULOCK:** _____

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_____.

CHAIRMAN IGNATIUS: _____

_____.

MR. SHULOCK: _____.

CHAIRMAN IGNATIUS: _____

_____?

MR. SHULOCK: That's correct. And, I've just been told, informed, I have to do a *mea culpa*, that may be confidential.

CHAIRMAN IGNATIUS: And, my apologies as well. Is there anything else you wanted to add?

MS. AMIDON: No. Thank you.

CMSR. HARRINGTON: Just could I ask a follow-up question? I'm trying to get that straight, since now the cat is out of the bag _____
_____. Is it that --

CHAIRMAN IGNATIUS: Well, before we go on, let me ask --

[REDACTED - FOR PUBLIC USE]

1 MR. SHULOCK: They didn't let the cat
2 out of the bag, sir.

3 CHAIRMAN IGNATIUS: Yes. Before we go
4 on, if we do need to go into this, I would like anyone who
5 is not here with PNE, Resident Power, OCA, or Staff, to
6 please leave the room. And, sir, I apologize, I don't
7 know who you are. Are you with --

8 MR. BODI: I'm just an observer.

9 CHAIRMAN IGNATIUS: On behalf of who?

10 MR. B. FROMUTH: He's with me.

11 MR. BODI: With Resident Power.

12 MR. A. FROMUTH: He's with Resident
13 Power, Chairman.

14 CHAIRMAN IGNATIUS: All right. Your
15 name, sir? Your name please?

16 MR. BODI: Mark Bodi.

17 CHAIRMAN IGNATIUS: Oh. Thank you. I
18 knew you looked familiar. I couldn't figure out why.
19 Thank you.

20 (The hearing continues under separate
21 cover designated as "**CONFIDENTIAL &**
22 **PROPRIETARY**" and includes Page 52
23 through Page 57.)

24

[REDACTED - FOR PUBLIC USE]

1 (Public session resumes.)

2 CHAIRMAN IGNATIUS: All right. We are
3 back on a public record. And, I just want to assure
4 people, there was some question about the status of some
5 information that has not yet been ruled on, it's
6 confidential status, whether it's protected or not. And,
7 the norm, the practice in our rules require that something
8 that's pending confidential ruling should be kept
9 confidential. So, that applies to parties, to any other
10 participants, any observers, to protect anything that is
11 in that pending status. And, we appreciate your
12 assistance in that.

13 While we were breaking, we also caucused
14 among ourselves, the Commissioners caucused, and this is
15 what we would propose to do: We recognize the need to
16 find a balance between giving people an opportunity to
17 prepare and respond to requests. The Company was given a
18 very short time frame to respond to a lot of data
19 requests, and needed a few extra days. It worked
20 diligently, and it met that deadline, and we appreciate
21 that. The Staff now has a less extensive packet, but a
22 number of questions to respond to, OCA, sounds like one
23 question to respond to. And, in order to try and find a
24 balance, with the Companies' needs to move forward and get

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1 to a timely resolution of these issues, and the rights of
2 everyone to adequately prepare and have a meaningful
3 record, we will use the Friday date, March 22nd, as the
4 first day of a hearing, and not proceed on Wednesday, the
5 20th. So, that gives another preparation day for
6 everyone. If we can conclude this in one day, that's a
7 good thing. And, the more we've worked out in advance the
8 better. And, if there's any stipulated facts or any
9 agreement on any issues, so much the better. That's
10 always much more quickly. Particularly, I'm struck with
11 the comments about needing emails going back to the
12 pre-registration phase. And, those may be some things
13 that could be stipulated to. And, I don't know, I'll
14 leave it to you to work that out, if it's possible. And,
15 if that would move things along, then so much the better.

16 If an additional hearing date is needed
17 after the 22nd, we'll have to -- we'll have to look for
18 that date and find something as quickly as we can. It's
19 probably a good idea to start at 9:00 in the morning on
20 Friday, to give us an additional hour, and run later than
21 4:30, if need be, within reason. So, to run till
22 5:00-5:30 Friday afternoon, if need be.

23 We would like the discovery responses by
24 OCA and Staff to be submitted no later than Thursday

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1 morning, at 9:00 in the morning. If they can come in
2 sooner, that's fine, but no later than that. And,
3 obviously, delivered by e-mail to the parties, so there's
4 no delay in people receiving the information.

5 On the memorandum of law regarding
6 burden of proof, if the Staff or OCA would like to file
7 anything in response, it's free to do so. We would want
8 that to be received by, I would say, the close of business
9 Tuesday, in order for us to respond. If Staff or OCA is
10 not available to work on that, and working on other
11 things, that's fine. We can, on issues of law, we don't
12 need to have responses from people. They're not factual
13 allegations, and we can evaluate the law and deal with it
14 on our own. So, I really leave that to you, in juggling
15 the different preparation needs that you have.

16 We will issue an order prior to the
17 commencement of the hearing, obviously, on burden of
18 proof. We would have it out -- did I just say "Tuesday"
19 for the --

20 CMSR. HARRINGTON: Yes, close of
21 business, just for the --

22 CHAIRMAN IGNATIUS: Yes. So, it will be
23 out during the day Wednesday or very early Thursday
24 morning, because we now have the day free on Wednesday as

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1 well. And, there may be a few other issues that we can
2 address in the context of that order to help with the
3 moving forward on Friday in as streamlined a way as
4 possible.

5 One of the things that we will want to
6 hear on Friday will be the status with the ISO suspension.
7 And, that we will want to hear if there's any formal
8 written indication of the status, that would be something
9 to submit under confidential basis. What we do with the
10 status of PNE, if there is a cure with the ISO, I don't
11 know, we'll have to take that up. And, we're not ruling
12 today on any agreement that, if the ISO suspension is
13 cured, then that automatically means something about the
14 New Hampshire situation. But we will -- we will consider
15 that on Friday, if people want to raise that.

16 All right. Unless there's anything that
17 anyone thinks that I've forgotten? Looks like I have.
18 Ms. Amidon.

19 MS. AMIDON: Yes. Staff had some
20 additional discovery on the Company. If we issue that
21 today, can they respond the same time frame that Staff has
22 to respond to?

23 CHAIRMAN IGNATIUS: And, I don't know if
24 they have seen it, we don't know anything about how

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1 extensive that is.

2 MS. AMIDON: We discussed it. I think
3 that, if Staff has to turn this around, and we don't have
4 a witness till Monday to begin working on it, that they
5 can provide these things. It's items that they should
6 have. And, I can, if you want to direct them to do it, to
7 do that in one moment. The operating agreement for the
8 Companies; PNE notices to customers; and, for Resident
9 Power, the number of customers with suppliers other than
10 PNE, as related to the total customers.

11 MR. SHULOCK: There would have been some
12 additional ones, such as the dates of service to C&I
13 customers, customers under Rate G, Outdoor Lighting, and
14 any other non-residential account. So, the actual days
15 that those customers were customers of PNE.

16 CHAIRMAN IGNATIUS: You said "there
17 would have been more" or "there are more"?

18 MR. SHULOCK: No, that there are more
19 discovery requests than just that. So, --

20 MS. AMIDON: What Mr. Shulock is
21 referring to is, if you have not had a chance to look at
22 the objection, we asked, in the objection to the Motion
23 for Confidential Treatment, we asked for one, an
24 electronic version with non-identifying information for

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1 the residential customers, so that we could sort them by
2 date of enrollment and date of service. And, in addition,
3 we asked for the customer -- the C&I customers, we asked
4 for the enrollment date and the days of service, I
5 believe.

6 And, finally, in the Motion for
7 Confidential Treatment, we noticed that, with respect to
8 the Tab 11, the FairPoint agreement, there were some
9 exhibits or attachments to that agreement that were
10 omitted. And, we understand if they want to file it under
11 confidential treatment, but one example is the customer
12 list, which I think we would find highly useful.

13 CHAIRMAN IGNATIUS: Let me make sure
14 that I understand. Because a moment ago before you said
15 you wanted some information that was not
16 customer-specific, and then the customer list you did, you
17 said "without identifying information"?

18 MS. AMIDON: Well, insofar as the
19 customer list that was attached to the FairPoint
20 agreement, which the Companies are saying is
21 "confidential", the agreement to sell that business to
22 FairPoint, there was an attachment, I want to say it was
23 "Attachment C", which was a customer list, identification
24 of the customers that were being transferred to FairPoint.

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1 While we understand that that's confidential and will
2 probably be provided to us in a redacted version, that's
3 what we are looking for there. That's different than what
4 -- different than I believe was Tab 7, what we asked for
5 in the objection to the Motion for Confidential Treatment
6 in Tab 7.

7 CHAIRMAN IGNATIUS: Let me suggest this.
8 First, I want to hear from Attorney Carter on the response
9 time of Thursday morning, at 9:00, to respond to those
10 questions, if that's acceptable. But also would
11 recommend, when we adjourn here in a few minutes, that the
12 more you can either describe or write down the actual,
13 what exactly it is you'll be asking for, get that out in
14 writing as soon as possible, the better, so there's no
15 misunderstanding, rather than trying to work this out on
16 the fly.

17 Attorney Carter, is Thursday morning, at
18 9:00, for response to those workable?

19 MR. CARTER: I believe so. We haven't
20 -- we've been doing our best to cover what she's reading
21 into the record now. I don't think, based on what Staff
22 has said, there will be a problem. We request they put it
23 in writing, so we have something to follow. But I don't
24 believe that's going to be a problem. If there is, we'll

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1 alert them, and, if necessary, the Commission, as soon as
2 possible.

3 CHAIRMAN IGNATIUS: All right.

4 MS. AMIDON: Thank you. I just wanted
5 the Commission to recognize that earlier on we mentioned
6 our need for some additional discovery, and I didn't want
7 that to be omitted in your layout of the procedure in this
8 docket. And, obviously, we can put that in writing,
9 because we know what it is. But thank you very much.

10 CHAIRMAN IGNATIUS: No, I appreciate
11 that. I had forgotten about that. And, then, we're also
12 going to be seeing, maybe later today, or Monday, a
13 follow-up filing on confidentiality that may fine-tune a
14 bit what's being requested for confidential treatment, and
15 the missing page in the Staff's submission that was
16 missing one of the attachment pages, that those would both
17 come in, is that correct? Can we see those by Monday?

18 MR. DESCHENES: On our side, yes, your
19 Honor. And, I think some of the -- if I'm understanding
20 what Attorney Amidon said, is that some of the requests
21 she just referenced are, like the Exhibit C, are part of
22 our earlier submission, and then there's the new discovery
23 for the Thursday. And, I would just say, I'm not quite
24 sure of the scope of that discovery now, and perhaps

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1 that's the list that she's talking about. Things like
2 operating agreements, obviously, I can pledge to madam
3 Chairwoman that we can get, and I'm not quite sure what
4 the whole scope is. So, I don't know that I can comment
5 on that fully.

6 CHAIRMAN IGNATIUS: All right. Well,
7 the more that can be all rolled into something by Monday
8 or even Tuesday on confidentiality -- let's just safe all
9 the legal stuff come in by Tuesday, end of the day,
10 whether it's confidentiality or anyone who wants to
11 comment on the "burden of proof" question, end of the day
12 for Tuesday for that. And, then, we'll take all those
13 issues up on Wednesday.

14 All right. Unless there's anything
15 else, thank you for your patience --

16 MR. CARTER: I'm sorry.

17 CHAIRMAN IGNATIUS: Mr. Carter.

18 MR. CARTER: Would the Commission be
19 inclined to set deadlines for issues as to witness lists
20 or the exchange of exhibits?

21 CHAIRMAN IGNATIUS: Yes. I thought you
22 had said that -- I thought it sounded like that was sort
23 of working out of when you'd be able to produce those
24 things. Because we're not -- can I just leave that for

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1 you two to discuss? Whatever it is, it's, obviously,
2 something that needs to be reasonable, not Friday morning
3 or even Thursday night. But I don't know if you need us
4 to tell you --

5 MR. CARTER: That's fine.

6 CHAIRMAN IGNATIUS: -- it's going to be
7 Friday or Monday or Tuesday, as long as it's --

8 MS. AMIDON: Mr. Carter previously said
9 that this afternoon he could provide his list, as we've
10 already given him what we intend to do. Whether our
11 witnesses are given sufficient time to be here is another
12 question. But -- so, I don't see why this afternoon it
13 wouldn't be possible to get his witness list. He
14 previously said that was possible.

15 MR. CARTER: I stand by my word. We
16 will give them our preliminary list today. And, I'm
17 assuming they will oblige us with theirs as well.

18 CHAIRMAN IGNATIUS: Yes.

19 MR. CARTER: And, in terms of the
20 exhibits and the written exhibits, we understand your --
21 we would be -- and we would anticipate actually providing
22 them with premarked copies of our exhibits, you know, in
23 advance of the hearing. And, I would appreciate a
24 reciprocal treatment on behalf of the Staff.

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1 The last issue is our ability to, and to
2 the extent that there are material witnesses who are not
3 inclined to show up here voluntarily, I believe that we
4 would need to seek leave from the Commission to subpoena
5 them.

6 CHAIRMAN IGNATIUS: Are you talking
7 about someone that you want to call?

8 MR. CARTER: People that we would --
9 that are material to our presentation that are not
10 parties, and that we would need to have subpoenas issue.
11 My understanding is we would need to seek the Commission's
12 assistance for that. And, I'm not sure if that's
13 something that needs to be addressed today?

14 CHAIRMAN IGNATIUS: It does. I had not
15 realized that you were anticipating witnesses that you
16 would need subpoena authority to get them here. So, I
17 think what we should do is, why don't you discuss that.
18 If there's something that you need our assistance in
19 doing, submit it to us, preferably the end of today, if
20 not, on Monday. The sooner we have to try and work it
21 through the better. We don't do it very often. And, so,
22 we'll have to kind of reconstruct the best way to make it
23 happen. Often, people will agree by a letter served on
24 the company to appear is sufficient, and not have to go to

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1 a formal subpoena.

2 MR. CARTER: Okay.

3 CHAIRMAN IGNATIUS: But we'll respond as
4 needed. Because of the time constraints, obviously, the
5 sooner we know, the better.

6 MR. CARTER: Thank you.

7 CHAIRMAN IGNATIUS: Thank you. Thank
8 you, everyone, for trying to work through all of these
9 little details as we get ready for the hearing. So, we
10 will take all of this under advisement.

11 **(Whereupon the prehearing conference**
12 **ended at 12:31 a.m.)**

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