

1 STATE OF NEW HAMPSHIRE

2 PUBLIC UTILITIES COMMISSION

3
4 **February 18, 2014** - 1:40 p.m.
5 Concord, New Hampshire

6 NHPUC FEB28'14 PM 3:28

7 **RE: IR 13-233**
8 **PNE ENERGY SUPPLY, LLC:**
9 *Investigation Pursuant to RSA 365:4*
10 *and N.H. Code Administrative Rules*
11 *Part Puc 204 into Dispute Between*
12 *PNE Energy Supply, LLC, and Public*
13 *Service Company of New Hampshire.*14
15 **PRESENT:** Chairman Amy L. Ignatius, Presiding
16 Commissioner Martin P. Honigberg17
18 Clare E. Howard-Pike, Clerk19
20 **APPEARANCES:** **Reptg. PNE Energy Supply, LLC:**
21 Robert P. Cheney, Jr., Esq. (Sheehan...)
22 James T. Rodier, Esq.
23 Jason D. Gregoire, Esq. (Sheehan Phinney...)24
Reptg. Public Service of New Hampshire:
Matthew J. Fossum, Esq.**Reptg. PUC Staff:**
Michael J. Sheehan, Esq.
Steven E. Mullen, Asst. Dir./Electric Div.

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

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1	Joint Statement of Agreed Facts presented by PNE and PSNH (02-14-14)	18
2	Excerpts from the ISO New England, Inc. Transmission, Markets and Services Tariff, consisting of the cover page and Pages 142 & 143	20

P R O C E E D I N G

1
2 CHAIRMAN IGNATIUS: Thank you, everyone,
3 for coming out on a snowy day. I'd like to open the
4 hearing in Docket IR 13-233. This is an investigation
5 docket involving PNE Energy Supply and Public Service
6 Company of New Hampshire. Let's first take appearances.
7 And, then, I'd like to hear what people's anticipation is
8 for how to proceed this afternoon, since it's a little
9 unusual, in terms of the docket and where we are. We do
10 have an order of the -- I mean, a letter of the
11 Commission, dated February 3rd, that laid out the
12 questions to be addressed. So, we'll, after we take
13 appearances, ask how people want to proceed in the order
14 of proceedings, and whether we have witnesses, offers of
15 proof, that sort of thing.

16 So, let's first begin, Mr. Cheney.

17 MR. CHENEY: Madam Chair, Bob Cheney,
18 from Sheehan, Phinney, Bass & Green, representing PNE
19 Energy. Also, with me today, Jim Rodier, Attorney Jim
20 Rodier, will be filing an appearance, and Attorney Jason
21 Gregoire, from Sheehan, Phinney, Bass & Green. Also
22 sitting at the table, Gus Fromuth, from PNE Energy, and
23 Dayna Bradbury.

24 CHAIRMAN IGNATIUS: Good afternoon.

1 MR. FOSSUM: And, good afternoon,
2 Commissioners. Matthew Fossum, for Public Service Company
3 of New Hampshire.

4 CHAIRMAN IGNATIUS: Good afternoon.

5 MR. SHEEHAN: Michael Sheehan, for Staff
6 of the Commission. And, with me at counsel's table is
7 Steve Mullen, Assistant Director of the Electric Division.
8 And, observing in the back is Amanda Noonan and Attorney
9 Suzanne Amidon.

10 CHAIRMAN IGNATIUS: Thank you, everyone.
11 I'm sure everybody has read the February 3rd, 2014 letter
12 of the Commission that set forth the hearing for this
13 afternoon at 1:30, and described the hearing, as to what
14 it would be taking up this afternoon. How do you
15 anticipate proceeding today? Mr. Cheney.

16 MR. CHENEY: Madam Chair, PNE Energy
17 worked with PSNH to file a Joint Statement of Agreed
18 Facts, which I assume you have before you. I thought that
19 what we do today is that we'd begin by responding to the
20 two questions that the Commission has asked. I think, for
21 the most part, see how things go and what kinds of issues
22 and questions come up, but I think most of the argument
23 related to the answers to those two questions can be based
24 upon the Agreed Statement of Facts. And, I don't foresee

1 at this moment a need for a witness from PNE Energy. But
2 I would propose that we start, give our response to the
3 questions, allow opposing counsel an opportunity to
4 respond, and I think a dialogue will ensue, until we have
5 your questions answered.

6 CHAIRMAN IGNATIUS: All right. Is that
7 acceptable to everyone? Anyone have any alternate
8 approach?

9 MR. SHEEHAN: Yes, ma'am.

10 CHAIRMAN IGNATIUS: Seeing none, then,
11 I'm good with that. Why don't you begin. I do need one
12 moment please.

13 (Short pause.)

14 CHAIRMAN IGNATIUS: All right. Why
15 don't we begin then. Thank you. So, Mr. Cheney, do you
16 want to begin then?

17 MR. CHENEY: Certainly. Looking at the
18 first question, the first question "Did PSNH act
19 improperly when it withheld payments otherwise due PNE
20 Energy beginning in February 2013, and, if so, what's the
21 appropriate remedy?" The details are laid out in the
22 Agreed Statement of Facts. The Agreed Statement of Facts
23 will show that initially PSNH withheld about \$250,000
24 worth of customer payments, held that for several days. I

1 think it was approximately eight days later, they remitted
2 to PNE Energy all but \$100,000, during this period of
3 time, this is now at the end of February of 2013. During
4 the ensuing weeks, we were searching and requesting an
5 invoice for the monies being withheld. As the Agreed
6 Statement of Facts will show, that invoice was issued on
7 May 8th. Along with the issuance of the invoice on May
8 8th, there was a further remittance, which brought the
9 total amount down to roughly \$92,000, which consisted of
10 approximately \$54,000 of tariff charges and \$38,000 of at
11 the time they were referred to as "recoupment costs".
12 These were the costs allegedly incurred by PSNH as a
13 result of having to move the PNE Energy customer load
14 from -- to Default Service back on February 20th.
15 Subsequent to that, more recently, the \$38,000 has been
16 returned to PNE Energy. So, today, we're really focusing
17 on the 54 -- approximately \$54,000.

18 PNE's position from the beginning, and
19 throughout this, is that this relationship between PNE and
20 PSNH is governed by the two Trading Agreements, which are
21 referenced in the Joint Statement of Agreed Facts. The
22 way we envision this process working is, when those
23 customer payments are due to be transferred to PNE, the
24 money should have come to PNE. An invoice should have

1 come to PNE. PNE would then pay the invoice or dispute
2 the invoice, and, ultimately, through a dispute resolution
3 process, and whatever process may follow upon that,
4 ultimately, the contested funds would have been reviewed
5 and a determination made.

6 As the Joint Statement of Agreed Facts
7 makes more precise, there was approximately \$54,000 that
8 was withheld. What's under contest today is not -- there
9 were additional charges, beyond tariff charges, beyond the
10 Selection Charges. And, we are not -- you can look at, I
11 think these are addressed in Paragraphs 28 and 29 of the
12 Joint Statement. We are not contesting the other tariff
13 charges. And, we are not contesting an amount related to
14 690 EDI drop transactions that PNE requested. When you do
15 the math, you come down to the amount that's in dispute
16 this afternoon is really \$44,285.

17 But, in terms of the answer to the first
18 question, PNE's view is that those agreements were in
19 place. They were never terminated. The agreements
20 provide that termination is to occur in writing. We never
21 received a writing from PSNH terminating the agreements.
22 Therefore, it's our position that these agreements
23 remained in place throughout the process. The money
24 should be in our pockets. An invoice should be sent to

1 us. And, we should be -- under that scenario, we would
2 have paid the roughly \$6,000 of other tariff charges and
3 whatnot, and we would be probably still disputing \$44,285
4 of Selection Charges.

5 CMSR. HONIGBERG: Can I ask a
6 question?

7 MR. CHENEY: Sure.

8 CMSR. HONIGBERG: We've only had these
9 papers since earlier today. Are there provisions of one
10 or both of the agreements that spell out what should have
11 happened?

12 MR. CHENEY: There are, in the Exhibit A
13 to the Joint Statement, is the Electric Supplier Services
14 Master Agreement. And, on Page 9, Section XI, it talks --
15 there's a provision in there that deals with
16 "termination".

17 CHAIRMAN IGNATIUS: One second. My 9
18 isn't showing Section XI.

19 MR. SHEEHAN: It's Page 9, XI.

20 CHAIRMAN IGNATIUS: Thank you.

21 MR. CHENEY: Pursuant to this provision,
22 it says "Notwithstanding anything to the contrary
23 elsewhere in this Master Agreement, any party, by written
24 notice to the other party, may terminate this Master

1 Agreement in whole or in part with respect to such
2 Breaching Party or suspend further performance without
3 terminating this Master Agreement upon the occurrence of
4 any of the following:"

5 So, PSNH, if they were to take action
6 and make a determination that PNE had not complied with
7 one of these other provisions on the basis of termination
8 or suspension, they could have provided written notice and
9 terminated the contract.

10 CMSR. HONIGBERG: But there are other
11 provisions in the contract earlier that spell out how the
12 money flows if it isn't terminated?

13 MR. CHENEY: It does, Commissioner. If
14 we go back to, I believe it is --

15 CMSR. HONIGBERG: Well, do you want to
16 move onto something else --

17 MR. CHENEY: Yes.

18 CMSR. HONIGBERG: -- and maybe somebody
19 else can find it for you?

20 MR. CHENEY: It's addressed -- again,
21 it's called out specifically in the Joint Statement of
22 Agreed Facts. Give me one second. It's --

23 (Court reporter interruption.)

24 MR. CHENEY: Oh, I'm sorry. It's

1 Paragraph 14 of the Joint Statement of Agreed Facts. Both
2 of these agreements contain this provision. That the
3 Company has the right to subtract fees that we, the
4 Supplier, might owe to the Company that are 60 days or
5 more past due, from the amounts the Company collects on
6 our behalf, and then subsequently reimburses to us.

7 So, what we had in this situation is the
8 customer payments were collected by PSNH, held by PSNH
9 from February 20th on. We weren't invoiced until May 8th.
10 The way the agreement would operate is that, upon being
11 invoiced -- the way the agreement would operate is the
12 money would come to us, we would be invoiced. We would be
13 required to pay within 60 days or dispute. That's not
14 what happened. The money was held first, and we were
15 invoiced, you know, several weeks later.

16 I think the reason, at least from the
17 supplier perspective here, the reason that this is an
18 important provision, is because all of the money under
19 consolidated billing flows into the Company, PSNH, and our
20 revenue supply, if you will, our revenues will come from
21 the remittances that we get from PSNH. So, at the end of
22 February, we were in a tough spot, when they were holding
23 \$250,000 worth of our money, very tight, very tough for a
24 small company. These agreements are what kind of balance

1 out the -- and, again, our perspective, a David & Goliath
2 situation, where, if they hold the money, we have to dance
3 to their tune.

4 So, our response on Question 1: The
5 agreements were in place. They never got terminated, they
6 never got suspended. The straightforward provisions to
7 the agreement would say "you give us the money, you
8 invoice us, we pay/we don't pay, and then we dispute."

9 The question asks "what the remedy is?"
10 At this point in time, it's hard to, you know, the simple
11 remedy is that the money should be immediately turned over
12 to us, minus the funds that we're not contesting. Because
13 of where we are today, from a practical point of view, the
14 question is going to be answered by the second question.
15 Do we get the Selection Charges back or not? However,
16 while, from a practical point of view, we are all here
17 today trying to sort out how to straighten and resolve the
18 situation, there's a very important principle here that we
19 don't want to get lost in the shuffle, so to speak. Which
20 is, if the Trading Agreements are in place, they need to
21 be followed, the money needs to go and be paid according
22 to the Trading Agreements, unless they're suspended. I'll
23 offer that, if the agreements are suspended and there's no
24 agreements at all in one of these situations, I'm not

1 quite sure what happens or what anybody would do. At
2 least with the Trading Agreements in place, there is a
3 structure and a process for handling the remittances of
4 customer payments and the flow of money. You suspend
5 those and you take those away in one of these situations,
6 and I think you're entering into a free-for-all. Again,
7 our view.

8 So, the second question, which, in a
9 way, is going to answer what we do with the first
10 question. The second question relates to whether or not
11 "PSNH improperly calculated and assessed the approximately
12 50,000", is what the secretarial letter said, I'm
13 representing today that we're really talking about
14 \$44,285, "in Competitive Supplier Charges that it withheld
15 from PNE? What's the proper allocation of those between
16 PNE and PSNH and what is the appropriate remedy?" I've
17 answered the allocation question I think already, of the
18 50,000, again, 44,285 is what we're looking to have
19 remitted back to PNE, the rest we would accept as charges
20 that we would pay.

21 In the letter that is in the docket, I
22 think it's dated December 16th, from PSNH to the
23 Commission, PSNH says that the result in 12-295 settles
24 this docket. That because, as I read their argument, that

1 because of the decision arrived at in 12-295, there's no
2 reason now to go back and look at this docket, because
3 12-295 was prospective only, and was leaving in place all
4 the Selection Charges that preceded the effective date in
5 the 12-295 docket.

6 We take exception to that view. We
7 think that this issue in 13-233 is still very much alive.
8 The reason for that is that, in 12-295, part of the reason
9 that the Commission did not get to the question of --
10 well, they did address the question of recoupment for the
11 past Selection Charges. But my reading of the order in
12 12-295 is that the reason -- part of the reason or at
13 least the reason that the Commission did not get to that
14 issue is because it wasn't within the scope of that
15 docket. There's a statement in the order in 12-295 that
16 says that, in that docket, they never discussed and the
17 Commission never made a finding that there was anything
18 illegal or discriminatory. Again, that was an issue that
19 was beyond the scope of that docket. PNE would submit
20 here that that's exactly what the issue is here in this
21 docket and what our original complaint was. Our complaint
22 starts and ends with "We think that the imposition of the
23 Selection Charges in our case was not consistent with the
24 underlying PSNH tariff."

1 CHAIRMAN IGNATIUS: Mr. Cheney, are you
2 saying that it's -- when you said "the imposition of it in
3 your case was improper", in the context of the suspension
4 and the actions of the ISO and the whole problem that
5 erupted in February of 2013? Or, are you saying any
6 supplier charges assessed against PNE were not in
7 conformance with the tariff, and that it's not really
8 related to the suspension issue?

9 MR. CHENEY: The ones that are before us
10 right now are the -- just the Selection Charges that
11 relate to the February event and follow-on. There were,
12 as laid out in the Joint Statement of Agreed Facts, when
13 you look at the paragraphs beginning -- I think it begins
14 around Paragraph 24 to 29, ultimately, you'll see that, in
15 the invoice that PNE received, there were Selection
16 Charges relating to 9,547 EDI transactions. Of those, 690
17 were EDI transactions that PNE initiated during the time
18 period in question. So, we don't -- those we're not
19 contesting, under the -- under the tariff, as it was
20 written and as it was applied, we would be -- we were
21 charged \$5.00. The 12-295 docket looked at this
22 supplier-to-supplier transfer, saw that the existing
23 supplier and the new supplier both being charged \$5.00.
24 It was \$10.00. 12-295 concludes there should be only one

1 switch, one \$5.00 fee. Of the remaining --

2 CHAIRMAN IGNATIUS: Before you go to
3 something else, I'm lost. So, are you saying that the 5
4 and 5, if you will, was improper, and, in this docket, we
5 should remove one of those 5s?

6 MR. CHENEY: In this docket, where
7 it's -- it's not just removing one of those 5s. Because,
8 in 12-295, in your order, you were concentrating on a
9 supplier-to-supplier exchange. Here, that's not what's
10 happening, at least not as to most of this. As to most of
11 this, what you have is a load asset being moved off of ISO
12 into Default Service. So, there's no new supplier,
13 unless -- well, the new supplier is PSNH. But we learned
14 from the 12-295 docket the PSNH doesn't impose a \$5.00
15 charge on itself.

16 What our position is, is when you read
17 the language of the Section 2(a) of the PSNH tariff right
18 now, as it was written at the time that these transactions
19 occurred, it says that you get charged a \$5.00 Selection
20 Charge to the existing supplier, if the existing supplier
21 initiates a drop transaction. In this case, our argument
22 is that we didn't initiate any drop transaction.

23 CMSR. HONIGBERG: It was initiated on
24 you.

1 MR. CHENEY: It was done by someone
2 else. I believe it was done by PSNH. But, once we come
3 up to February 20th, and we're suspended from ISO, we lose
4 the load asset. Our customers are gone. That load asset,
5 by virtue and operation of the ISO tariff, now moves to
6 the host market utility, PSNH. PSNH gets the customers.
7 And, presumably, PSNH initiates all the EDI drop
8 transactions. And, when you read the literal words of
9 Section 2(a) of the current tariff, it says that, in order
10 to be charged the \$5.00 Selection Charge, you have to
11 initiate that drop transaction. That is the point at
12 which the \$5.00 charge can be assessed. So, we didn't
13 initiate that EDI drop transaction. The current tariff
14 would say there's no way to assess us the \$5.00 Selection
15 Charge, regardless of one switch, two switch, it's
16 different in the 12-295 docket.

17 CHAIRMAN IGNATIUS: And, your argument
18 is not that \$5.00 is an inappropriate amount, it's just
19 that the tariff doesn't apply?

20 MR. CHENEY: Exactly. You know, I can't
21 anticipate everything that PSNH is going to say, but one
22 thing that PSNH has said, in their December 16th letter,
23 is they -- when you read Section 2(a) of the tariff, it
24 says that either the supplier or it's agent has to

1 initiate this drop transaction request. And, in a phrase
2 in the December 16th letter, PSNH suggests that ISO-New
3 England was our agent in this case. We disagree with that
4 position. I don't think ISO-New England would think that
5 they were acting as our agents. I think, under the
6 principles of law of "agency", they're not our agent.
7 There is another tariff out there, it's the ISO-New
8 England tariff. Market participants come to that tariff
9 to participate and utilize the services of ISO-New England
10 pursuant to the tariff. We have, in our Joint Statement
11 of Agreed Facts, recognized the ISO-New England tariff as
12 the applicable tariff here. In that tariff, and I have
13 another provision that's not in the Joint Statement, but
14 that I would like to offer to -- there's one section in
15 that tariff that talks about what happens when a market
16 participant is suspended. And, there's a tariff provision
17 in here that tells you what happens. If A market
18 participant loses their rights to their load asset, that
19 load asset, by virtue of the ISO-New England tariff, then
20 becomes the responsibility of the host market participant,
21 the host utility.

22 So, our argument, PNE's argument, is
23 that what's happening here is something -- an operation of
24 law that's occurring. There's not an "agency" that's

1 taking place here. ISO-New England is not acting as our
2 agent.

3 I also have to submit, as part of our
4 presentation today, I have a memorandum of law on agency
5 that I'd like to introduce into -- as part of our
6 argument.

7 CHAIRMAN IGNATIUS: Why don't we first
8 mark the Stipulation of Facts document before we get
9 anything additional coming in. That was filed on
10 February 14th. We, obviously, already have copies, but
11 let's mark that --

12 MS. HOWARD-PIKE: Exhibit 1.

13 CHAIRMAN IGNATIUS: -- as Exhibit 1 for
14 identification.

15 (The document, as described, was
16 herewith marked as **Exhibit 1** for
17 identification.)

18 CHAIRMAN IGNATIUS: And, then, if you do
19 want to seek to introduce some of the ISO tariff, I want
20 to ask the parties and Staff if they have reviewed that
21 and if they have any opposition to it being submitted?
22 So, if you want to mark that for identification. And,
23 then, after review, if parties have an objection to it
24 being made a full exhibit, we'll take that up.

1 MR. CHENEY: Thank you.

2 CHAIRMAN IGNATIUS: And, we can do that
3 at the end of the afternoon.

4 (Atty. Cheney distributing documents.)

5 CHAIRMAN IGNATIUS: But, Mr. Cheney, can
6 you just state for us exactly where this comes from?

7 MR. CHENEY: This is from -- these are
8 excerpts from -- a couple of pages, pages 142 and 143,
9 from the ISO-New England, Inc. Transmission, Markets and
10 Services Tariff. It indicates below that it's "Formerly
11 known as FERC Electric Tariff Number 3". And, this is
12 from the same tariff that's referenced in the Joint
13 Statement of Agreed Facts. Again, attached to the Joint
14 Statement of Agreed Facts, there are a few other excerpts
15 from this tariff, but not these two pages.

16 CHAIRMAN IGNATIUS: And, these terms
17 were in effect in February of 2013?

18 MR. CHENEY: Yes.

19 CHAIRMAN IGNATIUS: All right.

20 CMSR. HONIGBERG: Which provisions in
21 these pages are you directing us to?

22 MR. CHENEY: It's really Section (b),
23 begins at the bottom of 142, and continues on at the top
24 of Page 143.

1 This is the section that talks about
2 what happens to a load asset registered to a suspended
3 market participant, indicates that that load asset shall
4 be terminated, and the obligation to serve passes on to
5 the host market participant. Again, our point here is
6 that what's happening is not something that's happening
7 under the principles of "agency", but it's happening by
8 virtue of operation of law under this particular tariff.

9 CHAIRMAN IGNATIUS: All right. We'll
10 mark that for identification as Exhibit 2.

11 (The document, as described, was
12 herewith marked as **Exhibit 2** for
13 identification.)

14 CHAIRMAN IGNATIUS: And, you're free to
15 submit your memo of law regarding agency. We won't mark
16 that as an exhibit, but if you'd like to submit that, you
17 may.

18 MR. CHENEY: I will do that right now.

19 (Atty. Cheney distributing documents.)

20 CHAIRMAN IGNATIUS: Mr. Cheney, has
21 anyone else seen this yet?

22 MR. CHENEY: No.

23 CHAIRMAN IGNATIUS: All right. So, I
24 understand people won't have a chance to digest it. But,

1 if, after today's hearing, if there's a desire for memos
2 of law from other participants, we would, obviously,
3 entertain that as a matter of fairness.

4 MR. CHENEY: Certainly. Understood.
5 So, to sum up our response on Question 2, again, drawing
6 on the facts as laid out in the Joint Statement of Agreed
7 Facts, supplemented by the memorandum and the reference to
8 these additional excerpts in the ISO tariff, our position
9 is simply, if you read the words of Section 2(a) of the
10 PSNH tariff, because we did not initiate the drop
11 transaction requests that relate to the Selection Charges
12 imposed, that amount to \$44,285, we shouldn't be required
13 to pay those Selection Charges. That those Selection --
14 the remedy we're looking for, of course, is that that
15 amount of money is currently held by PSNH, we'd like it
16 returned to PNE. I think that's -- I think that that's
17 fair, in the grand scheme of things. They got the
18 customers. We just wanted our customer payments back, and
19 don't believe, in this situation, that the tariff provides
20 for Selection Charges to be imposed on PNE, as this
21 ISO-required transaction -- transfer of load asset
22 occurred.

23 CHAIRMAN IGNATIUS: And, remind me
24 again, I know it's in the Facts, but the math that gets

1 you to 44,285 is drop transactions for how many customers?

2 MR. CHENEY: Yes. If you go to the last
3 page of the Joint Statement of Agreed Facts, on Page 5.
4 So, we start out with, there's roughly \$54,070 held by
5 PSNH, and that's 47,735 in Selection Charges, look at
6 24(b), Paragraph 24(b). And, then, in Paragraph 24(c),
7 there is an additional \$6,656.39 in other PSNH tariff
8 charges. That's for billing services, collection
9 services, a couple of other items that are set forth in
10 the invoice. And, the invoice is attached to the Joint
11 Statement of Agreed Facts, along with PSNH's letter of May
12 8th, and that would be Exhibit F.

13 So, when you look at the 47,735,
14 which -- being the Selection Charges that are contained on
15 the invoice, you then subtract from that, again, we had
16 690 EDI drop transaction requests that we initiated. And,
17 when you do the math on those, \$5.00 times 3 -- \$5.00
18 times 690 is \$3,450. You subtract the \$3,450 from the
19 \$47,735, and that's how we arrive at 44,285 that we would
20 request be remitted back to PNE, based on our review of
21 the tariff and the monies currently held by PSNH.

22 CHAIRMAN IGNATIUS: All right. Thank
23 you. And, we may come back to some of this, after we've
24 been through further discussion with Mr. Fossum and

1 Commission Staff. Mr. Fossum.

2 MR. FOSSUM: Thank you. I suppose that
3 I would begin more or less where Mr. Cheney left off, and
4 address the second question first, that having to do with
5 PSNH's calculation and assessment of the Selection Charges
6 that are not -- that are still in dispute. And, in doing
7 so, I would reference, as we did back in our December 16th
8 filing, the Commission's order in 12-295, Order 25,603.
9 And, respectfully, I would disagree with PNE that the
10 issue today was outside the scope of that decision. The
11 Commission in that order noted specifically that PSNH, and
12 this is reading from Page 15 of that order, "PSNH argues
13 that a plain reading of the tariff indicates that the
14 Selection Charge will be applied to both the new supplier
15 and the legacy supplier when a customer moves from one
16 CEPS to another." And, turning to Page 16 of that order,
17 the Commission disagrees with PSNH's interpretation, and
18 states that "PSNH presented no evidence that shows that it
19 charges itself as well as the competitive supplier in
20 cases involving a switch between PSNH and a competitive
21 supplier. We therefore must conclude that only one switch
22 charge is appropriate when a customer moves from one
23 supplier to another, whether the switch is between two
24 competitive suppliers or a competitive supplier and PSNH.

1 Therefore, we direct PSNH to discontinue billing more than
2 one Supplier Charge when a distribution" -- "when a
3 distribution customer switches." And, then, later on that
4 same page, the Commission went on to deny the request that
5 had been made for refunds or rebates of charges prior to
6 that, to the date of the order.

7 I think it fairly plain, from the
8 reading of the order, that the Commission understood how
9 PSNH interpreted its tariff, and that the interpretation
10 of the tariff applied the same, whether it was from one
11 supplier to another or one supplier to PSNH. And, in
12 those instances, the dropped supplier was assessed a
13 charge. PSNH's witnesses testified to that. The
14 Commission's order recognized that. And, the order stated
15 that PSNH was "to discontinue". So, that means -- and
16 that, more specifically, that the Commission's directive
17 "shall be effective as of the date of this Order." So, as
18 of December 13th, 2013, PSNH was no longer permitted to
19 charge both the receiving or enrolling supplier, as well
20 as the supplier that had been dropped. However, prior to
21 that time, PSNH's practice was affirmed.

22 So, I would reiterate the request that
23 PSNH made in its December 16th filing, that there's no
24 longer dollars in dispute here. What remains are

1 Selection Charges that the Commission has said were
2 appropriate at the time that they were made.

3 CHAIRMAN IGNATIUS: Mr. Fossum, what
4 about the PNE argument that that's maybe what the tariff
5 says, but the tariff just doesn't apply in this instance,
6 because PNE didn't initiate the drop?

7 MR. FOSSUM: I don't -- well, I believe
8 that issue was, in fact, addressed in 12-295. Whenever
9 there is a change from one supplier to another, it's, I
10 suppose, under the reading that the Commission has put in,
11 that the dropped supplier doesn't initiate. And, that
12 said, in this instance, certainly PSNH didn't initiate any
13 activity. It was ordered to undertake this activity,
14 either through the EDI transactions that were submitted by
15 another supplier, or by the ISO.

16 So, I understand PNE's argument that it
17 didn't initiate the transactions. But, regardless, that
18 issue was raised and discussed and decided in 12-295.
19 And, PNE, as the dropped supplier in that circumstance,
20 was assessed a \$5.00 charge, consistent with the way that
21 PSNH had interpreted and applied its tariff up to that
22 time.

23 CHAIRMAN IGNATIUS: Can you tell me
24 where in the order it addressed what you just said, that

1 when someone else initiates a change, the dropped supplier
2 must pay the charge?

3 MR. FOSSUM: When the dropped supplier
4 must pay the charge?

5 CHAIRMAN IGNATIUS: Yes. I thought
6 that's what your argument was?

7 MR. FOSSUM: My argument was that that's
8 how PSNH had been applying its tariff up till the date of
9 the order. And that, from the date of the order and
10 following, it was no longer permitted to apply it in that
11 manner. So, up to the date of that order, PSNH had been
12 applying the charge to both the receiving supplier and the
13 dropped supplier.

14 CHAIRMAN IGNATIUS: Thank you. I
15 understand.

16 CMSR. HONIGBERG: And, let me go back
17 then to the "initiated" question. And, that was true,
18 they were doing it regardless of who initiated it or how
19 it was initiated or whether it happened by operation of
20 law?

21 MR. FOSSUM: Yes. I don't think PSNH
22 put nearly as much weight on the term "initiate", as had
23 PNE and others in the course of the 12-295 hearing.

24 But, in any event, as I said, the way

1 PSNH had interpreted its tariff is that the receiving
2 supplier was charged \$5.00 and the dropped supplier was
3 charged \$5.00. And, there was really no issue of dispute
4 over who initiated it. It was a consistent charge on both
5 sides of that transaction.

6 However, as I said, as of the date of
7 this order, that has stopped. But, at the time of the
8 events that we're discussing today, that was how PSNH had
9 interpreted and applied its tariff, and that's the tariff
10 that the Commission upheld in Order 12-295.

11 CHAIRMAN IGNATIUS: Mr. Fossum, my
12 memory is not very good. In 12-295, was there a
13 discussion of the appropriate charges or whether the
14 tariff applied in the event of an ISO-ordered suspension?

15 MR. FOSSUM: I don't believe that there
16 was any discussion in the order of a specific application
17 to an ISO intervention, no. I don't believe that was
18 discussed in the order.

19 CHAIRMAN IGNATIUS: And, was there
20 testimony on that issue? I don't recall it, but I'm
21 willing to be corrected.

22 MR. FOSSUM: I don't -- I don't believe
23 so.

24 CMSR. HONIGBERG: I don't have to plead

1 "bad memory", because I wasn't here. But was there any
2 discussion at that time of a pending challenge to it by
3 PNE? Was there some indication that that docket was
4 potentially going to resolve PNE's claim that it had?

5 MR. FOSSUM: I recall that there was
6 some testimony on the fact that this docket existed. But,
7 at the time, there was a -- at the time of the hearing,
8 there was a determination made that whatever issues this
9 docket had would be resolved within the context of this
10 docket. Now, --

11 CMSR. HONIGBERG: I'm sorry, the "this
12 docket" in that instance is the docket we're sitting in
13 right now or 12-295?

14 MR. FOSSUM: My understanding and my
15 recollection is that, during testimony at the hearing in
16 12-295, the issues discussed in this docket, 13-233, came
17 up. And, there was a determination by the Commission at
18 the time that whatever specific issues that were specific
19 to Docket 13-233 would be handled in 13-233.

20 CHAIRMAN IGNATIUS: Thank you. Please
21 go ahead.

22 MR. FOSSUM: Thank you. And, I suppose,
23 since I've begun with the second question, I'll sort of
24 continue simply to say that, as noted, I have received now

1 Mr. Cheney's memorandum of law. I have not reviewed it.
2 I do not know what it says. And, as the Commission has
3 indicated, I may seek an opportunity to file something in
4 response at a later time.

5 And, so, I suppose I would leave the
6 "agency" issue, for the most part, unaddressed at this
7 point. And, just reiterate our prior position, that
8 there's really no money in dispute anymore pursuant to the
9 Commission's order.

10 That said, and turning to the first
11 question in the Commission's notice, "whether PSNH acted
12 improperly in withholding payments?" Mr. Cheney did note,
13 when getting to the issue of a remedy, that that would be
14 resolved by the second question. So, to the extent that
15 there's a remedy issue, I would again refer to the
16 comments made relative to that.

17 But, to the issue of, initially,
18 "whether PSNH acted improperly", I would also note for the
19 Commission that, on July 8th, 2013, in this docket, PSNH
20 filed a response to the initial complaint, where it laid
21 out a great many of the arguments that it had for doing
22 what it did, and PSNH would reiterate those arguments, and
23 I think that they are still valid today.

24 Going to one of the issues that was

1 discussed earlier, the "termination" issue, as noted in
2 the Joint Statement of Facts, we agreed that the agreement
3 was neither terminated nor suspended by PSNH. But,
4 turning back to the Page 9, Section XI section that you
5 were referred to earlier, the last paragraph of that
6 section states "The enumeration of the foregoing remedies
7 shall not be deemed a waiver of any other remedies to
8 which either party is legally entitled." In this case,
9 and as PSNH has said in its July 8th, 2013 filing, it did
10 have a legal entitlement to set off the costs, that is a
11 legal entitlement that exists under New Hampshire law,
12 regardless of what the agreements say. Further -- and, I
13 would note that these are all arguments spelled out in a
14 little more depth back in the July 8th filing.

15 Both agreements, the Supplier Services
16 Master Agreement and the Trading Partner Agreement,
17 require the supplier to remain in compliance with all
18 applicable laws, tariffs, and regulations. And, at the
19 time of its default, PNE was not and could not have been
20 in compliance with all applicable tariffs, regulations,
21 and laws. So, therefore, it was not in compliance with
22 the agreement. And, yet, PNE contends that PSNH was bound
23 to continue to perform in precisely the same way
24 regardless of that fact.

1 At the time of its default, there was
2 record in this case that PNE had been suspended by the
3 ISO. It had voluntarily defaulted and voluntarily waived
4 its right to cure that default. And, PNE's affiliate had
5 issued a public statement that "PNE was suffering from
6 cash flow issues and had suspended its operations in New
7 Hampshire." And, under those circumstances, I believe
8 PSNH was more than entitled to seek some form of security
9 for the debts that it was owed. Now, PSNH had money
10 available to it for its processing of customer payments
11 and used that money to set off those debts. Just as it
12 was able to do under New Hampshire law.

13 So, I guess, without going into painful
14 detail, I would recommend -- or, I would commend to the
15 Commission to review the July 8, 2013 filing that PSNH has
16 made for the issues regarding whether PSNH acted
17 appropriately under the circumstances.

18 But, regardless of that issue, I would
19 argue that this matter presently is moot. There are no
20 funds any longer in dispute. Any funds that had been in
21 dispute were either returned to PNE or have been
22 determined to be properly held by PSNH. And, I would ask
23 that the Commission close this case with that finding.

24 CMSR. HONIGBERG: I have a question

1 about the situation with customers. When PSNH received
2 money from customers, and held it to pay off debts that
3 the Company owed PSNH, were customers protected in that
4 circumstance? Did everybody know that they had made their
5 payments, no one should be looking to them for any more
6 money?

7 MR. FOSSUM: Well, I can't say for
8 certainty, of course, what customers knew or didn't know.

9 CMSR. HONIGBERG: Not what they knew.
10 It's whether they were protected by you, or anyone,
11 really, from somebody coming after them for an additional
12 payment?

13 MR. FOSSUM: PSNH has the obligation
14 under its tariff and under the ISO tariff to assume the
15 load responsibility and to maintain consistent,
16 uninterrupted service for customers. So, to that extent,
17 they were protected. As for whether anybody would be
18 charged additional money, PSNH would charge the rates for
19 services that are covered in its tariff. So, at the point
20 that they became PSNH customers, they were charged for
21 energy at the rate that PSNH had in its tariff at that
22 time. Whether anybody would come after them for
23 additional funds? I believe that that was essentially
24 resolved through the Settlement that was approved by the

1 Commission in Docket 13-059 and 060, having to do with
2 whether Resident Power and/or PNE either could go after
3 customers or owed money back to customers. But what
4 financial protection was provided them? PSNH didn't
5 provide them any specific protection. At the point that
6 they became PSNH customers, they were treated the same as
7 all other PSNH customers.

8 CHAIRMAN IGNATIUS: Well, let me follow
9 up on that. If a customer, a former PNE customer had paid
10 a \$100 bill, does the \$5.00 in dispute come out of that
11 \$100 payment? And, so, the customer now has, although
12 they wrote a check for \$100, they actually only paid \$95
13 on their \$100 bill, because you've withheld 5 of it for
14 your customer charge?

15 MR. FOSSUM: I'm not entirely certain
16 how the customer payments were broken down in that
17 fashion. So, as I sit here, I can't say for certainty.

18 CHAIRMAN IGNATIUS: Well, is there any
19 source for the originally \$250,000, other than customer
20 payments?

21 MR. FOSSUM: No. Not that I'm aware of.

22 CHAIRMAN IGNATIUS: And, we're now down
23 to \$44,000. Those are all customer funds initially,
24 correct? I mean, there's not any escrow account or

1 anything held by PNE, this is all customer money?

2 MR. FOSSUM: That's correct. They were
3 funds that PSNH had taken in from customers that, had
4 things continued in their normal course, would have been
5 remitted to PNE. And, then, as Mr. Cheney has explained,
6 there would be an invoice from PSNH, and then PNE would
7 remit payment to PSNH. This -- we sort of skipped those
8 middle steps.

9 CHAIRMAN IGNATIUS: So, who would know
10 whether those customers have been credited their full, in
11 my case, \$100 payment on a \$100 bill or have only been
12 credited \$95 on a \$100 bill?

13 MR. FOSSUM: PSNH would, I guess, know
14 that, in that it would be the one crediting the customer
15 bills. But, as I sit here, as I say, I do not have that
16 information, as to exactly how those payments were broken
17 down and applied to the various customer accounts. But my
18 understanding is, no, there is no -- there's no intent and
19 no reason to go after any customer for any unpaid amounts.
20 Customers paid what they paid. And, there's no intention
21 by PSNH to seek any more from customers as a result of
22 this.

23 CHAIRMAN IGNATIUS: All right. Anything
24 further?

1 MR. FOSSUM: No.

2 CHAIRMAN IGNATIUS: I have a couple more
3 questions, Mr. Fossum. You said that, when PNE went into
4 default, it was not capable of meeting the terms of the
5 Electric Supplier Services Master Agreement. And, so, you
6 were entitled to keep some of those funds. Did you
7 terminate -- I guess you didn't terminate the Agreement at
8 that point. Why not?

9 MR. FOSSUM: That I can't say. That was
10 not a decision that I made. Those who would have made
11 that decision are not here. As for why exactly it wasn't
12 terminated, I don't know.

13 CHAIRMAN IGNATIUS: So, if the Agreement
14 is still in place, why did the Company not follow the
15 terms of the Agreement on disputing bills?

16 MR. FOSSUM: I think, because of the
17 very reasonable belief that PNE would not be able to pay.
18 As I say, PNE had suspended its New Hampshire operations.
19 It had voluntarily waived any right to cure. It had been
20 publicly stated as "having cash flow issues". I think
21 PSNH was in the very reasonable position of concluding
22 that PNE may not be able to meet any obligations on a
23 going-forward basis. As far as PSNH knew, the next day
24 PNE could have filed for bankruptcy. And, to continue

1 having to remit payments in that instance wouldn't make
2 any sense. PSNH had the very reasonable belief, based
3 upon the public statements of PNE and its affiliate, that
4 it would not be able to pay. And, I suppose that brings
5 up another issue, and something that the Commission may or
6 may not be aware of. Is that, fairly recently, there was
7 another supplier default by People's Power & Gas in the
8 State of New Hampshire. And, as I say, I don't know
9 whether or to what degree the Commission may be aware, but
10 there is a pending lawsuit in the Rockingham County
11 Superior Court between PNE's affiliate, Resident Power,
12 and PPG.

13 CHAIRMAN IGNATIUS: And, before you go
14 any further, what's the relevance of that to today's
15 hearing?

16 MR. FOSSUM: Simply this: Resident
17 Power has sought and received an attachment on PPG's
18 property to secure payment, in the belief that PPG may not
19 be able to meet its financial obligations going forward.
20 PPG has not been found to be at fault for anything.
21 There's been no determination by anybody that it's done
22 anything wrong. And, yet, Resident Power, which is owned
23 by the same owners as PNE, has contended that, due to
24 PPG's failure to meet its financial obligations, it must

1 be entitled to a form of security. So, PSNH simply did
2 what Resident Power did.

3 CHAIRMAN IGNATIUS: Did you seek an
4 attachment?

5 MR. FOSSUM: No. We used the common law
6 right that we had available to us to set off the debt owed
7 to us because we had the money in our possession.

8 CMSR. HONIGBERG: And, you have that
9 provision at the end of your termination clause that says
10 it doesn't waive any other rights that you might have?

11 MR. FOSSUM: Yes.

12 CHAIRMAN IGNATIUS: All right. Anything
13 further?

14 MR. FOSSUM: No thank you.

15 CHAIRMAN IGNATIUS: All right. Does
16 Staff have a position, want to weigh in on any of this,
17 before we go back and give Mr. Cheney an opportunity for a
18 response?

19 MR. SHEEHAN: Staff is not going to take
20 a position on one side of this dispute or the other. Just
21 a couple comments. First, we don't object to the exhibit
22 coming in, the additional language in the tariff. And,
23 just for clarify, to make sure when we leave today we know
24 what's in play and what's not in play. The complaint that

1 PNE filed initially asked for, as part of the relief, some
2 interest for not having access to the money and the like.
3 I suspect that would have been a relatively small number
4 anyway, but I have not heard whether that's officially in
5 or out of this case.

6 And, second, in the calculation of -- I
7 must say that we're very pleased with the Agreed Statement
8 of Facts, it's been a great help to Staff in reviewing
9 this case. But there's one clarification that we may
10 suggest. Again, on Page 5, Paragraphs -- those last few
11 paragraphs that does the math, the number that PNE is
12 claiming, the 44,285, the question concerns the money that
13 FairPoint paid a \$5.00 Selection Charge for the customers
14 that it acquired. And, I believe this 44,285 includes
15 what would be the second \$5.00 charge that was assessed to
16 PNE. And, Mr. Mullen and I are whispering back and forth
17 disagreeing of whether there should be an adjustment to
18 this 44,285 for the amount that FairPoint paid, or, if the
19 amount that FairPoint paid doesn't matter, we can just
20 push it aside and ignore it. So, we're not in the
21 position to ask questions, but that's a question we have.

22 CHAIRMAN IGNATIUS: Well, the 8,857
23 transactions, times \$5.00, gets you to 44,285, correct?

24 MR. MULLEN: Yes.

1 MR. SHEEHAN: Yes. Right. Just to go
2 from the beginning, there's the total 47,735, subtract out
3 the 690 drops that are not contested, which brings us to
4 the 44,285. And, that's based on the 8,800 customers.
5 The question is whether there should be another
6 subtraction for the 1,188 FairPoint customers, for which
7 they were charged the \$5.00, to bring us down to 38 and
8 change or not?

9 Okay. So, does that 44,285 include what
10 FairPoint's already paid or not? I guess that's another
11 way of asking.

12 So, the only other -- those are the only
13 comments I had. Thank you.

14 CHAIRMAN IGNATIUS: All right.
15 Mr. Cheney, and Mr. Fossum, both, if you have a response
16 to the question of whether that additional \$5,940 should
17 be removed from the 44,285?

18 MR. CHENEY: Yes, madam Chair. I'd like
19 to respond to that. I'd like to respond to some of the
20 other questions as well. But, however you'd like to
21 proceed?

22 CMSR. HONIGBERG: Start there.

23 MR. CHENEY: On the last question here,
24 what happens with in the instance of the FPE 1,188

1 customer accounts, that's where a \$10.00 charge is paid.
2 So, we paid \$5.00, that's part of the 44,285. And, in
3 addition to that, FPE has also presumably paid a \$5.00
4 Selection Charge. Now, this is what I think is the
5 distinction between 12-295 and this docket. What we're
6 talking about right now, with the FPE accounts, that's the
7 12-295 docket, supplier-to-supplier, and what you ruled a
8 \$10.00 charge, 5 to each, the initiator and the legacy
9 supplier. That's what the 1,188 are. So, yes, we paid
10 that \$5.00 charge.

11 But, when you get to the other accounts
12 that are transferred from the load asset to Default
13 Service, that's where our argument is, is that we are way
14 outside of 12-295. That's not a supplier-to-supplier
15 transaction, which was the focus of 12-295. And, in the
16 supplier-to-supplier transaction, clearly somebody's
17 initiating something. FPE enrolled. That's why they paid
18 \$5.00 on 1,188 accounts. We were just the legacy
19 supplier. And, under the ruling of 12-295, at least now,
20 we got hit for \$5.00. We didn't initiate anything. We
21 were just the receiver of a notice saying "you've been
22 dropped, because someone else has enrolled." But, in the
23 supplier-to-supplier, there's an initiator, that's another
24 supplier. When you get to what happened in February of

1 2013, there's no supplier initiating anything.

2 CHAIRMAN IGNATIUS: But that's not
3 right. I mean, you had a contract to transfer your
4 customers from PNE to FPE. That was something that you --

5 MR. CHENEY: Yes, we started that.

6 CHAIRMAN IGNATIUS: -- set forth on how
7 that transaction would occur. So, how are you not part of
8 that transaction?

9 MR. CHENEY: We are part of that
10 transaction, but they are -- again, that transaction was
11 FPE goes off and enrolls 1,188 customers. So, they paid
12 \$5.00 and we paid \$5.00.

13 CHAIRMAN IGNATIUS: All right. Are you
14 not contesting then the \$5.00 associated with the FPE
15 customers, those 1,188 transactions?

16 MR. CHENEY: One moment please.

17 (Atty. Cheney Conferring with PNE
18 representatives.)

19 MR. CHENEY: Yes. In light of the
20 ruling of the Commission in 12-295, those
21 supplier-to-supplier transactions, that \$5.00 charge, we'd
22 have to deduct that from the 44,285, because the
23 Commission has ruled in 12-295 we can't get that back.

24 CHAIRMAN IGNATIUS: So, we would take

1 44,285, subtract 5,940?

2 MR. CHENEY: Yes. Yes, that's correct.
3 You ruled that in 12-295.

4 CHAIRMAN IGNATIUS: And, did I get this
5 right, 38,345 would be the remaining amount?

6 MR. MULLEN: Yes.

7 CHAIRMAN IGNATIUS: According to the CPA
8 in the front row, I'm getting a nod.

9 MR. MULLEN: Yes.

10 CHAIRMAN IGNATIUS: So, I'll take that
11 as a "yes". All right. Please proceed with other issues.

12 MR. CHENEY: Just to address some of the
13 other issues. Again, I wanted to make a distinction
14 between whatever is going on between PPG and Resident
15 Power, and the attachment that was provided there, but I
16 think the big distinction is, I don't know what the
17 contracts are between PP&G and Resident Power. But,
18 certainly, there were agreements in place between PNE and
19 PSNH. And, those agreements govern how the money is
20 supposed to flow. And, when you get to this issue of this
21 automatic set-off or this right to go off to common law
22 remedies, well, I'm not sure you can just ignore the
23 agreement and assert these other rights. To the extent
24 it's covered by the agreement, I think you're bound by the

1 agreement.

2 On the issue of the obligations that PNE
3 was under in signing these agreements, among which was you
4 can't be suspended, I don't believe that gives any
5 automatic right to PSNH to self-help at that point. In
6 particular with, if you look at Page 9 of the Master
7 Agreement, that Section XI again on "Termination", if you
8 look at Subsection -- Subparagraph (c), you know, if "the
9 Breaching Party commits a material breach of any of its
10 obligations under this Master Agreement", gets suspended,
11 "and has not cured such breach within 15 days after
12 receipt of a written notice from the other party
13 specifying the nature of such breach." So, if we breached
14 our obligations, PSNH thought it was a material breach,
15 sent us a notice of that particular material breach, it
16 wasn't cured within 15 days, then, yes, they would have a
17 right, again, to suspend the contract, terminate the
18 contract, if they did that in writing; they didn't do
19 that. What it doesn't authorize them to do is to go out
20 and self-help.

21 Now, also in this particular proceeding,
22 and the two questions that were raised today, we got the
23 so-called "self-help" recoupment costs back, when they --
24 shortly after they sent in the December 16th letter, they

1 paid us 38,000 and some dollars, which were the alleged
2 recoupment costs. So, at least as far as we're concerned,
3 at this point, that issue is moot. What we're looking at
4 now is the invoiced Selection Charges, and not the
5 recoupment charges. So, this fine point of "can they go
6 off and use set-off under common law, when they're bound
7 very specifically as to how they're supposed to proceed in
8 terms of a material breach?" I think they can't do it.
9 But, I think, for purposes of today, that discussion is
10 really moot anyway.

11 I want to go back just for a moment to
12 the question Commissioner Honigberg asked about customer
13 payments. Again, when you have an opportunity to look at
14 the Trading Agreements more closely, what you'll see is
15 that these agreements are set up to provide for "what are
16 the services that PSNH is providing to us as supplier?"
17 And, one of them in here is "consolidated billing". So,
18 when the bill goes out to the customer, the customer gets
19 one bill. They pay the bill. They pay the bill in full,
20 and all the money goes into PSNH. So, if they paid their
21 bill in full, they're done. They've paid the bill. Now,
22 it's a question of that customer payment coming in the
23 door, and what gets remitted to PNE and what does PSNH get
24 to keep. Certainly, they get to keep their portion of the

1 bill. And, then, when it gets to the PNE portion of the
2 bill, our answer to the first question was "You send us
3 the money. You send us an invoice. If we don't pay in 60
4 days, then we start disputing it, but you send us the
5 money and the invoice."

6 So, I don't think any customer -- should
7 any customer not have paid their entire bill, well, then
8 there's collection services that are provided for in these
9 agreements, PSNH would go out and do the collections. But
10 if a customer paid the bill, it's a dispute between PSNH
11 and PNE, what gets remitted to us under these agreements
12 and what doesn't get remitted to us.

13 I guess, on the last comment, the Staff
14 raised the issue of interest. To the extent that we
15 are -- if we were to be awarded now our somewhat reduced
16 Selection Charges, you know, we just want the statutory
17 rate of interest on whatever that would be, that final
18 award.

19 But I think I'd close by saying, I think
20 what's at issue here, in 13-233, is, apart from the 1,188
21 FPE and PNE transactions, is the remaining scope of what's
22 in this docket is -- was not addressed and is outside and
23 not bound by 12-295. Thank you.

24 CHAIRMAN IGNATIUS: Thank you.

1 Mr. Fossum, is there anything else you wanted to add?
2 We'll give one last opportunity.

3 MR. FOSSUM: Thank you. Excuse me.
4 I'll be very brief. As PNE has just indicated, the
5 Commission's decision in 12-295 foreclosed the charges
6 related to the transfers to FairPoint Energy. And, I
7 suppose I would ask the Commission to consider what
8 difference there is between those transfers and the
9 charges that were made to PNE, in light of those
10 transfers, and the transfers of the remaining customers?
11 I would submit that there's no material difference
12 whatsoever. PNE was the recipient of a drop in both
13 instances. And, PNE has agreed that its payment it would
14 be owed on the drops of the customers that went to
15 FairPoint, it likewise would be owed on the customers who
16 went anywhere else, including PSNH.

17 CHAIRMAN IGNATIUS: Thank you. Anything
18 else from Staff?

19 MR. SHEEHAN: No, ma'am.

20 CHAIRMAN IGNATIUS: Then, we appreciate
21 everyone's arguments. We did mention that, if anyone else
22 wants to file a memo of law regarding "agency", they would
23 have the opportunity to do so. If you want to, let's set
24 a date sometime next week. Mr. Fossum, do you have a

1 recommended date next week?

2 MR. FOSSUM: Nothing specifically
3 recommended. I mean, the Commission's rules would
4 provide, I believe, ten days normally. I think that would
5 take us near the end of next week. That would be more
6 than sufficient time, as far as I'm concerned.

7 CHAIRMAN IGNATIUS: Yes. That would be
8 in responding to a petition or a motion. But why don't we
9 set it for Friday, February --

10 CMSR. HONIGBERG: Twenty-eighth.

11 MR. SHEEHAN: Twenty-eighth.

12 CHAIRMAN IGNATIUS: -- 28th?

13 CMSR. HONIGBERG: Uh-huh.

14 MR. FOSSUM: So, next Friday then?

15 CHAIRMAN IGNATIUS: Yes. That would
16 be --

17 MR. FOSSUM: Or before, if possible.

18 CHAIRMAN IGNATIUS: Before is good.

19 CMSR. HONIGBERG: Or, if you decide you
20 don't want -- you know you don't want to file something,
21 let us know.

22 MR. FOSSUM: Certainly. If I determine
23 that there's nothing to file, I will send something to the
24 Commission to let them know not to expect anything further

1 from us.

2 CHAIRMAN IGNATIUS: I like the idea of a
3 filing to demonstrate "no filing". There's something
4 particularly government-ish about that. But, no, and even
5 just an e-mail to Mr. Sheehan would be fine, so we know
6 not to be looking for it.

7 All right. Is there anything else to
8 take up?

9 MR. CHENEY: Just to confirm, were the
10 exhibits accepted?

11 CHAIRMAN IGNATIUS: Thank you. We
12 hadn't done that. Is there any objection to making both
13 Exhibits 1 and 2 full exhibits, striking identification?

14 MR. SHEEHAN: No, ma'am.

15 CHAIRMAN IGNATIUS: Appears not. Then,
16 we'll do so. Thank you. And, I appreciate everyone being
17 very organized and focused on the questions at hand, and
18 the Statement of Facts was a tremendous help in zeroing in
19 on the important issues that are still in dispute. So,
20 thank you for the time that you spent in developing that.

21 If there's nothing further, then we will
22 take this under advisement and close the hearing. Thank
23 you.

24 **(Whereupon the hearing was adjourned at 2:56 p.m.)**