

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DE 13-057

**OFFICE OF THE CONSUMER ADVOCATE'S OBJECTION TO RESIDENT POWER'S
VERIFIED EMERGENCY PETITION FOR DECLARATORY JUDGMENT AND
MOTION FOR NOTICE AND HEARING**

Now Comes the Office of Consumer Advocate (OCA) and respectfully objects to Resident Power's (RP) Verified Emergency Petition and moves the Public Utilities Commission (PUC) to Provide Notice and a Hearing for Resident Power to demonstrate compliance with Chapter Puc 2000 Competitive Electric Power Supplier Rules. In support of this pleading the OCA states:

1. On February 22, 2013 RP filed before the PUC a Verified Emergency Petition for Declaratory Judgment seeking the following relief:
 - a. Confirmation of RP's status as a registered aggregator in good standing pursuant to Puc 2003.04 and;
 - b. Confirmation of RP's authority to act as an aggregator on behalf of certain former PNE Energy Supply, LLC. (PNE) customers.
2. OCA objects to granting this request without notice and a hearing. Customers received inconsistent communication from PNE, RP and the news media regarding changes to customers' competitive energy supplier and aggregator.
3. For example, the PNE "Customer Notice of Service Provider Change" dated February 11, 2013 states "Resident Power will no longer be an aggregator for your account, but will cooperate with FairPoint Energy to assist in the transition between energy

suppliers.” Customers could reasonable interpret this statement as a representation to RP customers that RP has terminated or surrendered its rights and obligations as an aggregator as delineated in its Terms and Conditions (See Exhibits B and D to the Emergency Verified Petition).

4. Similarly, in its own notice to customers, RP sates, “If you would like to still be a customer of Resident Power and authorize us to place you with an electricity provider other than PSNH at rates below PSNH, please reply to this email and type “RENEW MY ACCOUNT” See Attachment A.
5. For RP to now argue that its aggregator status remains unchanged is inconsistent with previous notices to customers, whether from RP or PNE. Customers should not now be given another piece of confusing information. To do so undermines the integrity of the competitive market place. At a minimum, a public hearing must be held to explain to customers what has taken place.
6. Further, residential customers and their representatives must have notice and an opportunity to be heard regarding enforcement of Puc rules on competitive electric suppliers and aggregators.
7. RP must show compliance with Chapter Puc 2004 consumer protection requirements including, but not limited to, Puc 2004.08 (2), which requires disclosure of “[T]he nature of any business relationships or affiliations with any CEPS [Competitive Electric Power Supplier] or utility”.
8. It is not clear that RP and PNE are operating as independent organizations. From a customer’s perspective, RP and PNE are related organizations. Customers must be able to rely on official statements from suppliers and aggregators regarding the status

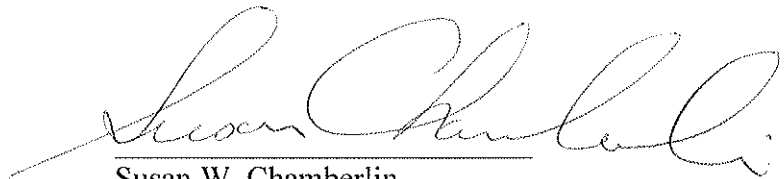
of their service. When PNE issues a statement that Resident Power is no longer the customers' aggregator, customers reasonably rely on such a statement. Customers should not be required to navigate the actual agency relationship between the two companies. If there is a less than an arms-length relationship, the nature of that relationship must be disclosed to the PUC to avoid improper market behavior or "gaming." See Puc 2004.08 (2).

9. There is evidence that the two companies have a structural interdependence. In docket DE 12-097 Mr. August Fromuth testifies that he is "the Managing Director of Freedom Logistics, PNE and Resident Power." See *In Re: Electric Utility Customers Investigation into Purchase of Receivables, Customer Referral and Electronic Interface for Electric Distribution Utilities*, DE 12-097 Testimony filed July 16, 2012. Furthermore, RP's manager, Bart Fromuth, also serves as the registered agent for PNE Energy Supply, LLC . See *The Certificate of Formation for Resident Power as a Limited Liability Company* (April 15, 2011) and *PNE Energy Supply, LLC petition to become a Competitive Electric Power Supplier* (April 8, 2011). The PUC must determine if there is a financial interdependence as well.
10. In addition RP's contract with customers makes a guarantee of a "cheaper electricity rate than you currently pay". (See Verified Emergency Petition, Exhibit C.) RP must show how it plans to implement this guarantee.

Wherefore the OCA respectfully requests the Commission:

- a. Deny RP's Verified Emergency Petition for Declaratory Judgment;
- b. Provide Notice and an Opportunity to be Heard on RP's compliance with PUC rules;
- c. Require RP make a showing of how RP will honor its publicized guarantee to its customers;
- d. Grant such other relief as justice requires.

Respectfully submitted,

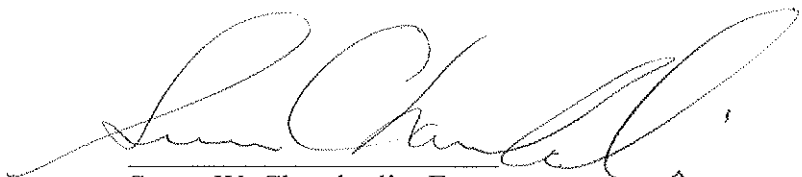


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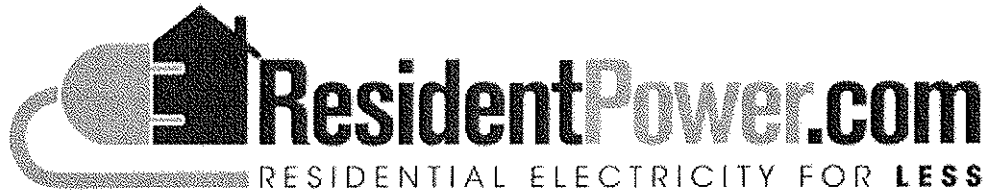
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was forwarded this day to the parties by electronic mail.

February 27, 2013



Susan W. Chamberlin, Esq.

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Dear Resident Power Customer:

IMPORTANT UPDATE – REPLY REQUESTED

If you are receiving this message the transfer of your account from PNE Energy Supply to Fairpoint Energy has regrettably not gone through as expected. Your account had been enrolled for transfer to Fairpoint Energy at the same low rates, terms and conditions that you enjoyed with PNE Energy. However, the transfer of your account has been halted, and your account is now back with Public Service of New Hampshire (PSNH), whose rates are considerably higher than those you enjoyed with PNE Energy and would have enjoyed with Fairpoint Energy.

If you would like to still be a customer of Resident Power and authorize us to place you with an electricity provider other than PSNH at rates below PSNH rates, please REPLY to this email and type "RENEW MY ACCOUNT" and your first and last name in the email body or subject line. Or you may also call our office at 603 232 9293, and speak with one of our associates, between 9 am and 5 pm, M-F.

If you renew with us, we will get to work, right away, to find you an alternative to PSNH default service at rates that continue to be well below PSNH. If you do not renew with us, please be advised that you will remain on PSNH's high default service rate of \$.0954 per kwh, until you choose another supplier on your own, or you re-sign with Resident Power.

While we are writing you, we would like to clear up some inaccuracies in the media the last few days.

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1. Despite what was reported by the Nashua Telegraph and other news outlets this morning, Resident Power has not been suspended by the ISO or the New Hampshire PUC. The Telegraph and others have since changed their online versions to reflect the truth. We remain in good standing and continue to serve you (should you renew with us) and all of our 14,000 NH customers with superior rates and service.

2. Your account has gone back to PSNH as of Wednesday, February 20, 2013. A request was made to PSNH to transfer your account to Fairpoint Energy automatically and protect your rates, however PSNH declined to make the switch. PSNH stated that although they had the ability to do the automatic transfer, they lacked the "resources" to effect the transfer in the time provided.

3. Your former supplier, PNE Energy Supply, suffered from cash flow issues, stemming from record market volatility that caused them to seek out a buyer for their residential customers (Fairpoint Energy). PNE temporarily and voluntarily suspended their own service of the New Hampshire market, and was not forcibly suspended or removed from the market as others have suggested, nor has PNE Energy gone out of business. PNE Energy tells us that it intends to return to the market as New Hampshire's only locally owned and operated electricity supplier in the next few weeks.

When we started Resident Power, almost two years ago now, all we wanted to do was provide EVERY New Hampshire rate payer with a competitive choice, not just the large businesses. In the early days, the only supplier that would work with us, and be the first to offer service to residential and small commercial customers, was PNE Energy. As their partner these last two years, we salute them for being bold enough to do to what no competitive supplier had done before. Today, almost 50,000 New Hampshire customers have chosen an alternative supplier to help save them money on their electricity bills, and PNE Energy Supply is a major reason for that.

In closing, we hope that you decide to remain with Resident Power. It has been our pleasure to serve you and we hope you give us the chance to continue that relationship.

Please remember, that if you wish to stay with Resident Power, please REPLY to this email and type "RENEW MY ACCOUNT" and your first and last name in the email body or subject line. Or you may also call our office at 603 232 9293, and speak with one of our associates, between 9 am and 5 pm, M-F.

Sincerely,

Your Resident Power Enrollment Team

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