STATE OF NEW HAMPSHIRE
BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 13-059
RESIDENT POWER NATURAL GAS & ELECTRIC SOLUTIONS, LLC.

DE 13-060
PNE ENERGY SUPPLY, LLC

Investigation and Show Cause Hearing on Penalties and Suspension or Revocation of Aggregator and CEPS Registrations

STAFF OBJECTION TO MOTION FOR CONFIDENTIAL TREATMENT BY RESIDENT POWER AND NATURAL GAS & ELECTRIC SOLUTIONS LLC and PNE ENERGY SUPPLY LLC

On February 28, 2013, the Commission issued an Order of Notice opening an investigation and scheduling a show cause hearing as to whether Resident Power Natural Gas & Electric Solutions, LLC (Resident Power) and/or PNE Energy Supply, LLC (PNE) should be subject to penalties or suspension or revocation of their registrations pursuant to N.H. Admin Code Rule 2005. In the Order of Notice, the Commission directed Resident Power and PNE to produce information and documents related to the investigation by 9:00 a.m. on March 7, 2013. On March 6, 2013, PNE filed a motion to extend the deadline for the production of documents to 9:00 a.m. on March 12, 2013. The Commission granted the extension by secretarial letter dated March 7, 2013.

Resident Power and PNE (the Companies) filed the documents on March 12, 2013 along with a Motion for Confidential Treatment and Protective Order (Motion) pursuant to N.H. Admin. Code Rule Puc 203.08. The Motion requests confidential treatment for the vast majority of the documents produced in response to the Commission's Order of Notice.

Staff hereby objects to the Motion for Confidential Treatment and Protective Order and in support of its objection, Staff states as follows.

1. The Commission's February 28, 2013 Order of Notice requested eleven categories of information from PNE and Resident Power. PNE and Resident Power claim that virtually all of the information contained in the documents, with the exception of the contents of Tab 9 which consist of certain notices provided by Resident Power to customers (see footnote #1 to the Motion for Confidential Treatment and Protective Order), pertain to "competitive business strategies, descriptions of the [Companies'] operations, personal and private information concerning [Companies] customers, and financial information related to these operations" which is not available to the public and has not been published elsewhere and that "all of this information constitutes confidential, commercial and financial information exempt from public disclosure under RSA 91-A:5, IV." The Companies further claim that the disclosure of these documents would impair competition in the energy supply industry because it would reveal to their competitors their "operations, customers and business strategies." Motion at 3.
2. Although the Companies make a sweeping claim that almost all of the material produced is confidential, the documents provided include information that is publicly available. *See*, *e.g.,* information regarding company principals that is available in Docket No. DM 11-075 regarding the registration of PNE, Docket DM 11-081 regarding the registration of Resident Power, and in documents filed with the N.H. Secretary of State's office. (Tab 1).

3. In some cases, the information for which confidential treatment has been requested has previously been disclosed in articles published in newspapers, trade magazine and other media. See, e.g., http://www.nhbr.com/news/996165-395/is-natural-gas-price-spike-an-omen.html and http://www.nhpr.org/post/power-new-england-resident-power-situation-explained.
4. In addition, the Companies did not make any effort to minimize redactions to allow public review of the information provided in response to the Commission's Order of Notice. For example, with respect to customer lists, Tab 10, the Companies should have redacted only the specific information that has been recognized as confidential--the account number, customer name and key code for customers listed in Tab 10; the remaining information, including enrollment date, residence type, effective date and rate class, constitutes public information.
5. The Commission expedited the investigation and the show cause hearing to "serve the interests of justice and provide a speeding resolution of issues so that the competitive markets may continue to function efficiently." Order of Notice at 5. Because competitive energy supply and electric service customers are impacted by this proceeding, there is strong public interest in this investigation. Accordingly, the Commission should take every effort to assure that the process is open to the public to the maximum extent possible and that the treatment of the information provided by Resident Power and PNE is consistent with RSA 91-A, New Hampshire's Right to Know law.

6. Pursuant to RSA 91-A:5, IV, records of "confidential, commercial or financial information" are exempt from public disclosure. In determining whether commercial or financial information should be treated as confidential and exempt from public disclosure, the Commission has used a three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Conventions*, 157 N.H. 375, 382 (2008). *See Unitil Corporation*, Order No. 25,014 (September 22, 2009) 94 NH PUC 484 at 486. The first step in the analysis is to determine whether there is a privacy interest associated with the commercial or financial information which would exempt the information from disclosure pursuant to the Right to Know Law. Second, when a privacy interest is at stake, the Commission assesses the public's interest in disclosure. The second step requires the Commission to determine of whether disclosure of the information would inform the public of the conduct and activities of state government, in this case, the Commission. In the final step, the Commission considers whether the public's right to know outweighs the potential harm associated with disclosure. *Id.*

7. The Commission's rule governing requests for confidential treatment, N.H. Code Admin. Rules Puc 203.08, is consistent with the requirements of the balancing test. Pursuant to the rule, a motion for confidential treatment must contain the following:

> (1) The documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought;
> (2) Specific reference to the statutory or common law support for confidentiality; and
> (3) A detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.

8. The Companies' Motion is deficient because, rather than describing the portion of the documents that should be accorded confidential treatment, the Motion merely recites the list of documents required by the Order of Notice and claims confidentiality for every document. Based on the redactions to the letter that was filed with the Commission, the Motion includes the accompanying cover letter to the Commission, portions of which quote the Order of Notice verbatim. Further, while the Companies rely on RSA 91-A:5, IV, which protects from disclosure certain "confidential, commercial or financial information," the Motion does not contain a detailed statement of the harm that would result from disclosure but rather appears to rely on a global assertion that the disclosure of any information contained in the many documents provided would result in competitive harm to PNE and Resident Power. This lack of detailed information does not comply with the requirements of the rule.
9. If the Commission were to grant the Companies' Motion for Protective Order and Confidential Treatment, it is highly likely that the show cause hearing would have to be closed to public attendance, including consumers and the media who may have an interest in the Commission's conduct of the proceeding. Staff believes that the Commission would find such an outcome to be inconsistent with the public interest, but makes the point in the instant filing to demonstrate the sweep of the Company's Motion.

10. Based on the foregoing, the Staff objects to the Company's Motion for Protective Order and Confidential Treatment. Having said that, the Staff has reviewed the nature of the information contained in Tabs 1-11 and recommends that the Commission decide the Motion as follows.

11. Tab 1 contains the response to the request for organizational charts describing the corporate structure of PNE and Resident Power. As noted above, this information is either available in PNE's or Resident Power's filings with the Commission and at the Secretary of State's website, has been discussed in the media, or is not commercially sensitive. Staff requests that the Commission deny the Companies' Motion as it relates to the information contained in Tab 1.

12. Tab 2 contains the response to the request for records of the Companies demonstrating ownership of PNE and Resident Power. The response consists of copies of the Limited Liability Agreement of PNE and Resident Power. While portions of the documents may be confidential, Staff believes that there are many provisions in these agreements that do not contain confidential or financially sensitive information that would harm the Companies if made publicly available. Staff requests that the Commission specifically direct the Companies to immediately review the documents and re-file the documents, redacting only those portions that are confidential to comply with Puc 203.08.

13. Tab 3, Tab 4 and Tab 5 respond to requests for certain financial information that would be considered sensitive commercial information pursuant to RSA 91-A:5. IV and Staff's objection does not extend to that material.

14. Request No. 6 asked PNE to produce a business plan and financial pro forma that demonstrates PNE's plan for curing its financial default and restoring its status with ISO-NE. The response is contained in the March 12, 2013 cover letter to the Commission's Executive Director at item No. 6. Staff argues that only those dollar amounts stated in paragraph No.6, not the text of the response, constitute financial information protected from disclosure pursuant to RSA 91-A:5, IV. In addition, Staff does not find any basis in RSA 91-A;5, IV for the redaction of the cover letter which restates the requests contained in the Commission's order for information and either directs the reader to the appropriate tab containing the response, identifies why the Companies cannot provide some of the requested information, or provides a summary response. Therefore, with the exception of the dollar amounts that appear in item No. 6, Staff requests that the Commission deny the Motion with respect to the information contained in the cover letter.
15. Tab 7 contains information that responds to the request for communication "to or from ISO-NE with respect to PNE's financial security obligations and ability to meet the same, and all written communications to or from ISO-NE with respect to the suspension of PNE's trading account and termination of PNE's load asset account." The Staff recommends that the Commission grant the motion with respect to the contents of Tab 7.
16. Tab 8 responds to a request for a list of all commercial and industrial customers of PNE, both present and past, including an indication of which customers were aggregated by Resident Power. The identity of customers usually can be considered

commercially sensitive information, the disclosure of which could harm the competitive position of PNE. Staff notes, however, that the identities of many of those same customers are available on Resident Power's website (see attached Exhibit 1 and http://residentpower.com/small_business.php). Therefore, Staff views the request for confidential treatment of the customers' identities questionable. In addition, Staff requests that the Commission require PNE to provide the effective date and termination date for each listed customers.

17. Tab 10 contains information that responds to a request for the date each customer entered into an aggregation agreement and the date each notice referenced in Tab 9 was provided to the customer. As noted in Paragraph 4 above, only the account number, key code, and name of the customers constitute confidential information. Staff therefore recommends the Commission grant the Motion with respect to the account number, key code and name of the customers but deny the Motion with respect to the enroll date, type of residence, effective date and rate class. Staff recommends that the Commission direct Resident Power to denote each customer sequentially by number when it resubmits the redacted contents of Tab 10, and to provide the information electronically to facility Staff's review.

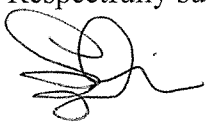
18. Tab 11 contains a copy of a purchase and sale agreement entered into by PNE, Resident Power and FairPoint Energy, but does not appear to include Attachments A and C which are part of the agreement. While Section 4 (Consideration) appears to be confidential financial information, there is nothing in the Motion to support confidential treatment of the other provisions in the agreement. Staff requests that

the Commission grant the Motion insofar as it relates to Section 4 and direct the Companies to immediately review the documents and re-file the documents, redacting only those portions that are confidential pursuant in compliance with Puc 203.08 and supplementing its earlier response to include the aforementioned Attachments A and C and any other attachments, exhibits or schedules that are part of this agreement..

The OCA supports Staff's motion and requests Resident Power and PNE provide unredacted copies of all material to the OCA as required by law. *See* RSA 363:28 VI which states "[t]he filing party shall provide the consumer advocate with copies of all confidential information filed with the public utilities commission in adjudicative proceedings in which the consumer advocate is a participating party and the consumer advocate shall maintain the confidentiality of such information."

WHEREFORE, Staff objects to the Motion for Confidential Treatment in part and requests that the Commission grant the relief requested above such further relief as it deems appropriate.

Respectfully submitted this day, March 14, 2013,



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Service List in DE 13-059 and DE 13-060