

Debra A. Howland
Executive Director
Public Utilities Commission
21 S. Fruit Street
Concord, NH 03301

February, 28, 2011

**RE: Staff's Recommendation for an Immediate Show Cause Hearing
as to Whether Resident Power, LLC and/or PNE Energy Supply,
LLC Should be Subject to Penalties or their Registrations
Suspended or Revoked Pursuant to Puc 2005**

Dear Ms. Howland:

PNE and Resident Power have briefly reviewed the above-referenced Staff Recommendation received late yesterday. At this time, subject to later expansion and amplification, we have the following response:

The relevant PUC Rule in this matter is Puc 2005.01, the relevant portion of which is as follows:

- (a) For the purposes of this section, "mitigating circumstances" means facts, actions or conditions which might excuse or justify a particular course of action.
- (b) The commission shall, pursuant to RSA 374-F:7, III, impose a penalty upon a CEPS, up to \$1,000.00 per day for each violation, after notice and an opportunity to be heard, for any of the following:
 - (1) Failure to register with the commission as required in Puc 2003;
 - (2) A violation of any of the provisions of Puc 2004 or any applicable state statute;
 - (3) Acting in a manner contrary to or providing false information in the statements required by Puc 2003; or
 - (4) A violation of any commission order enforcing RSA 374-F:7 or Puc 2000;
- (c) The commission shall suspend the registration of a CEPS, after notice and an opportunity to be heard for:
 - (1) The second and third violations of any of the provisions of Puc 2004 or any applicable state statute; or
 - (2) A second violation of any commission order enforcing RSA 374-F:7 or Puc 2000.

Puc 2005.01 is applicable to only Competitive Electric Power Suppliers. An Aggregator such as Resident Power is not a CEPS. *See*, Puc 2002.05. Accordingly, Resident Power should not have been included in Staff's Recommendation for a Show Cause Hearing.

The relevant issue is whether PNE violated any of the provisions of Puc 2004. The Staff Memo appears to allege three violations of Rule 2004:

- 2004.07 (f) Any CEPS that ceases to sell electricity within the state shall, prior to discontinuing such service: (1) Provide at least 30 days written notice to any affected utility and to the commission; and (2) Provide each REDACTED customer written notice of its intent to cease operations at least 30 days prior to the start date of the customer's next billing cycle.

PNE states that they did not violate 2004.07(f) as alleged by Staff and in support offer the following:

A. PNE's cash flow position was overwhelmed by well-documented market events beyond its control, and in such a short period of time, that it rendered compliance with 2004.07(f) impossible. 2004.07(f) requires 30 days notice, PNE's financial issues arose and concluded in less than approximately 21 days.

B. 2004.07(f) is inapplicable in that it contemplates a CEP making a long term business decision (more than 30 days in advance) to cease selling electricity in the state, i.e. a permanent shut down. PNE has never had any intention to cease selling in the State permanently; to the contrary, PNE has made it clear that they intend to be fully operational and serving customers again as soon as they are allowed to do so.

C. 2004.07(f) is inapplicable in that it contemplates a CEP intentionally sending its customers back to the host utility and discontinuing CEP rate service. PNE attempted to transfer the customer accounts in question to FPE, another competitive supplier, at the same rates they enjoyed with PNE. PNE did not intend for its customers to be without an alternative CEP.

D. 2004.07(f) is inapplicable in that transfers of customers between CEP's are governed by 2004.05(K)-(I) and the Commission granted PNE a waiver to those provisions on February 8, 2013. The contemplated transaction was a transfer of customers, not a cessation of service, therefore the fact that the transfer may have been incomplete does not render moot PNE's intent.

PNE states that they did not violate 2004.08 (a) (2) provision notice to customers of the nature of any business relationships or affiliations with any CEPS or utility. In support of their position PNE offers the following:

PNE is a CEP, this provision only applies to aggregators, therefore PNE cannot be found in violation of 2004.08(a)(2). PNE would like to state for the record that several members of Staff had intimate knowledge of the relationship between PNE and Resident Power, as well Bart Fromuth's connection to both entities. PNE contends that members of Staff were heavily consulted for guidance during the creation and growth of both entities, including but not limited to language and content of marketing materials, rule compliance and terms and conditions. Written communications with members Staff are available upon request in support of PNE's assertions. PNE is perplexed and dismayed by Staff's implication in their memorandum that Staff was unaware of/confused by Bart Fromuth's connection with both entities. Mr. Fromuth's role with the two entities has not changed since their creation in 2011. In hopes of setting the

record straight, Bart Fromuth serves as Managing Director of Resident Power and acts as Corporate Counsel to PNE Energy Supply. Both businesses share similar ownership and Staff has not raised an issue with Bart Fromuth's connection to both companies in the past.

As a matter of clarification, PNE never made any attempt to enroll any customer during the time frame provided by Staff in their memorandum. PNE's records indicate that no customer had been enrolled with PNE as far back as February 1, 2013. Furthermore, PNE's records do not demonstrate any attempted enrollment over that same time frame. The only EDI activity that PNE engaged in on the 21st of February was the submission of an interval data request, not an enrollment request. PNE believes that Staff may have been willfully and intentionally misled by the source of their information. PNE would like to request that Staff provide them with the information that they are relying on in this allegation, including, but not limited to, the names of the parties responsible for providing such information.

PNE requests that the Commission consider all the aforementioned prior to acting on Staff's Recommendation. In attempt to reduce the confusion and sort out which issues may or may not need to be brought before the Commission, PNE suggests that a Technical Session may be more appropriate means of resolution at this time.

Within a week, PNE will respond to all of the allegations involved in the Staff memorandum, including those that do not implicate violations of 2004.

Thank you for taking the time review and consider this initial response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bart Fromuth', written over a horizontal line.

Bart Fromuth
Managing Director
Resident Power, LLC

Sincerely,

A handwritten signature in black ink, appearing to read 'Howard Plante', written over a horizontal line.

Howard Plante
President
PNE Energy Supply, LLC