

THE STATE OF NEW HAMPSHIRE  
BEFORE THE 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 and Order that PNE Temporarily Cease Enrolling  
New Customers**

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into this 26<sup>th</sup> day of March, 2013, by and among PNE Energy Supply, LLC (“PNE”), Resident Power Natural Gas & Electric Solutions, LLC (“Resident Power”), and the Staff of the New Hampshire Public Utilities Commission (“Staff”), with the intent of resolving the issues discussed herein. This Settlement Agreement constitutes this document, along with an incorporated Stipulation of Facts, attached as Exhibit A.

ARTICLE I. INTRODUCTION AND PROCEDURAL HISTORY

1.1 The events giving rise to these dockets are set forth in the attached Stipulation of Facts.

1.2 On February 27, 2013, Staff filed a recommendation memorandum (“Staff Memo”) requesting that the Commission schedule a show cause hearing as to whether Resident Power and/or PNE Energy Supply, LLC (PNE) failed to comply with certain provisions of NH Admin. Code Puc 2000.

1.3 On February 28, 2013, the Commission issued an Order of Notice that scheduled a hearing on the merits for March 22, 2013. The Order of Notice directed PNE and Resident Power to produce certain documents and information to Staff.

1.4 On March 12, 2013, PNE and Resident Power produced to Staff the documents and information identified in the Order of Notice.

1.5 On March 14, 2013, PNE and Resident Power served data requests on Staff. Staff responded to the data requests on March 22, 2013.

1.6 On March 15, 2013, the Commission conducted a pre-hearing conference, at which Staff requested a continuance of the start of the hearing on the merits. PNE and Resident Power objected to the requested continuance. On March 15, 2013, the Commission issued a secretarial letter continuing the start of the hearing to March 22, 2013.

1.7 On March 20, 2013, the Commission issued Order No. 25,475, holding that Staff would have the burden of proving by a preponderance of the evidence the allegations in the Staff Memo.

1.8 On March 20, 2013, PNE and Resident Power filed a pre-hearing memorandum.

1.9 On March 20, 2013, Staff filed an emergency motion to continue the start of the hearing on the merits. On March 21, 2013, PNE and Resident Power objected to the motion. On March 21, 2013, the Commission issued a secretarial letter granting the motion, in part, and continuing the start of the hearing on the merits to March 26, 2013.

1.10 On March 21, 2013, Resident Power filed a motion to dismiss the alleged claims against Resident Power, arguing that the Commission does not have the authority in its rules to impose sanctions on aggregators. On March 22, 2013, Staff filed a letter responding to Resident Power's motion to dismiss.

1.11 On March 25, 2013, Staff filed an assented-to motion to continue the start of the hearing on the merits to March 27, 2013. On March 25, 2013, the Commission issued a secretarial letter granting the motion and continuing the hearing on the merits to March 27, 2013.

1.12 On March 26, 2013, the Commission issued Order No. 25,478, holding that the Commission “in this instance does not have authority in its rules to impose sanctions on aggregators,” and that the Commission’s authority as pertaining to Resident Power was limited to investigating the allegations in the Staff Memo and seeking assurance of corrective action, if appropriate.

ARTICLE II. SETTLEMENT TERMS

2.1 All former PNE customers placed on default service with PSNH on February 20, 2013, will receive a one-time payment of \$9.50 as a result of being placed on default service. Each customer’s acceptance of said \$9.50 payment shall be conditioned on the customer waiving any claims against PNE relating to the customer’s placement on default service. The \$9.50 payment to each customer shall be reduced by any amount owed by the customer to PNE under the PNE terms and conditions prior to February 20, 2013.

2.2 PNE shall provide instructions to affected customers on receiving the payment described in paragraph 2.1 above.

BEGIN  
CONFIDENTIAL

[REDACTED]

END CONFIDENTIAL

2.4 Prior to resuming operations as a CEPS in New Hampshire, PNE will establish an escrow account in the minimum amount of \$200,000 in satisfaction of the requirements set forth

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in Puc 2003.01(d)(4) and 2003.03. PNE shall increase the amount of said escrow account as required by Puc 2003.03 (a)(2).

2.5 Staff recommends that upon the establishment of the escrow account described in paragraph 2.4 above, the Commission terminate the operation of provisions in the February 28, 2013 Order of Notice, which directed PNE to cease enrolling new customers pending the outcome of this docket, and which provided that, until further notice, New Hampshire electric utilities would not be required to accept or process new customer enrollments from PNE.

2.6 PNE agrees to develop a notice for former PNE customers, and to provide that notice to the PUC Consumer Affairs Division for its review. PNE and the PUC Consumer Affairs Division will work cooperatively and in good faith on the content of said notice. Such notice shall be provided to the former PNE customers by email, posting on the PUC website, and via a PUC press release, no later than April 12, 2013.

### ARTICLE III. GENERAL PROVISIONS

3.1 This Settlement Agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition. If the Commission does not accept this Settlement Agreement in its entirety, without change or condition, or if the Commission makes any findings that go beyond the scope of this Settlement Agreement, and PNE, Resident Power, and Staff are unable to agree to said changes, conditions or findings, this Settlement Agreement shall be deemed to be withdrawn and shall not constitute any part of the record in this proceeding and shall not be used for any other purpose.

3.2 PNE, Resident Power, and Staff agree to this joint submission as a full release of all issues and allegations raised in the February 27, 2013 Staff Memo, and the February 28, 2013 Order of Notice.

3.3 The captions in this Settlement Agreement are for convenience only and shall not affect the construction or interpretation of any term or provision herein.

3.4 PNE, Resident Power, and Staff agree that the Commission's acceptance of this Settlement Agreement does not constitute precedent for any particular issues in this proceeding. Acceptance of this Settlement Agreement by the Commission shall not be deemed to restrain the Commission's exercise of its authority to promulgate future orders, regulations or rules that resolve similar matters affecting other parties in a different fashion, nor shall this Settlement Agreement be deemed to restrain the authority of the Legislature to enact any law that would resolve the matters covered by this Settlement Agreement in a different fashion.

3.5 This Settlement Agreement shall not be deemed an admission by any of the Settling Parties and Staff that any allegation or contention in this proceeding by any other party is true and valid. This Settlement Agreement shall not be construed to represent any concession by any settling party hereto regarding positions taken with respect to PNE and Resident Power, nor shall this Settlement Agreement be deemed to foreclose any settling party in the future from taking any position in any subsequent proceedings.

3.6 The resolution of any specific issue in this Settlement Agreement does not indicate agreement to such resolution for purposes of any future proceedings.

3.7 Except for Staff, the rights conferred and obligations imposed on any signatory by this Settlement Agreement shall be binding on or inure to the benefit of their successors in interest or assignees as if such successor or assignee was itself a Signatory hereto.

3.8 This Settlement Agreement is the product of confidential settlement negotiations. The content of the negotiations, including any documents prepared during such negotiations for

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the purpose of reaching a settlement, shall be privileged and all offers of settlement shall be without prejudice to the position of any party presenting such offer.

3.9 This Settlement Agreement may be executed in multiple counterparts, which together shall constitute one agreement. Signatures made by facsimile or other electronic means shall have the same effect as if made as an original to the document.

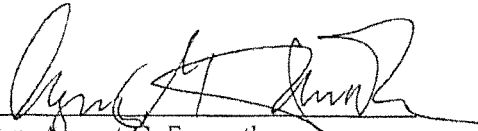
#### ARTICLE IV. CONCLUSION

4.1 PNE, Resident Power, and Staff affirm that the proposed Settlement Agreement is a just and reasonable resolution of the issues in this proceeding for purposes of this proceeding only.

Docket Nos. DE-059 & DE-060

Dated: March 26, 2013

PNE ENERGY SUPPLY, LLC



By: August G. Fromuth  
497 Hooksett Road, Suite 179  
Manchester, NH 03104

Dated: March 26 2013

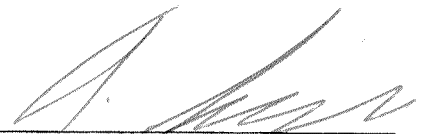
RESIDENT POWER NATURAL GAS &  
ELECTRIC SOLUTIONS, LLC



By: A. Bart Fromuth  
816 Elm Street, Suite 364  
Manchester, NH 03101

Dated: March 26, 2013

STAFF OF THE PUBLIC UTILITIES  
COMMISSION



By: ALEXANDER F. SPEIDEL  
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Stipulation of Facts

Pursuant to N.H. Code Admin. Rules Puc 203.20, which provides for the filing of stipulations of facts in writing with the Commission when the parties agree upon the facts, Resident Power Natural Gas & Electric Solutions LLC (“Resident Power”), PNE Energy Supply LLC (“PNE”), and the Staff of the New Hampshire Public Utilities Commission (“Staff”), for the purpose of settling all claims in the above-captioned matters, hereby assent to and agree upon the following facts:

Resident Power, PNE and Staff stipulate as follows:

1. On April 11, 2011, PNE filed an Application for Initial Registration to become a competitive electric power supplier (“CEPS”) under Puc 2003.01. (See DM 11-075.)
2. PNE was the second entity since deregulation went into effect in New Hampshire to apply for registration as a CEPS to serve residential customers, and the first to be approved. As a result, the PNE Application presented the first occasion for an applicant and Staff to apply the rules applicable to CEPS serving residential customers.
3. The Application completed by PNE requested information designated by Puc 2006.01. In response to Question 4 in the Application, asking PNE to identify “any affiliate and/or subsidiary of the applicant that is conducting business in New Hampshire,” PNE identified the only two affiliates that were conducting business in this state: Freedom Logistics



d/b/a Freedom Energy Logistics LLC, which is a registered aggregator providing wholesale energy to Market Participant End Users; and Halifax-American Energy Company, a retail electricity marketer for South Jersey Energy.

4. On April 15, 2011, Resident Power filed a Notice of Intent to aggregate/broker electricity pursuant to Puc 2003. (See DM 11-081.)

5. In 2011, Staff, within the scope of Staff's regulatory responsibilities and discretion, and in good faith, did endeavor to provide Resident Power and PNE with guidance regarding PUC laws and regulations in the context of the registration applications filed in Docket No. DM 11-081 (Resident Power) and Docket No. DM 11-075 (PNE).

6. On May 21, 2011, as a result of Staff's request at a May 19, 2011 meeting between Staff, PNE, and Resident Power, Resident Power filed an Amended Notice of Aggregation Registration which stated: "Resident Power was first started as a division of Freedom Logistics and has been marketing to residential customers in New Hampshire since March 2011 under that arrangement." The Amended Notice stated further that Resident Power subsequently was created as "a stand alone legal entity," and that it would not be soliciting business "under this new entity name until approved to do so by the Commission."

7. On June 16, 2011, Staff filed a Recommendation which noted that Staff's concerns regarding Resident Power's marketing activities "were discussed in detail" at the May 19, 2011 meeting, that Staff and Resident Power had agreed to measures "to resolve the issues that arose during the application process," and that Staff "recommends that [Resident Power] be registered to provide electric aggregation service in New Hampshire effective May 25, 2011."

8. On June 28, 2011, the Commission issued a secretarial letter approving Resident Power's application to provide aggregation services.

9. On September 19, 2011, Staff filed a Recommendation that noted PNE's statement in its application that PNE intended to serve residential customers and recommended that "PNE's application for Registration as a CEPS be approved to serve only PSNH customers at this time."

10. On September 22, 2011, the Commission issued a secretarial letter approving PNE's Application "to be registered as a competitive electric power supplier in the franchise area of" PSNH.

11. In the fourth quarter of 2011, PNE began supplying residential and non-residential customers. PNE reported its sales to non-residential customers in quarterly sales reports submitted to the Commission beginning in January 2012. PNE did not formally notify the Commission that PNE would be serving non-residential customers as required by Puc 2003.02(i). PNE did not recognize that because its Application indicated that PNE would be supplying residential customers, under Puc 2003.02(i), PNE should have formally notified the Commission that it would be supplying non-residential customers as well.

12. The registration standards for a CEPS under Puc 2003 for supplying to non-residential customers are the same as the registration standards for a CEPS to sell to residential customers.

13. Puc 2003.01(e) requires suppliers to notify the Commission of any changes to the information required by Puc 2003.01 within 30 days of the effective date of the change. Aside from the required notice, no further information is required from a CEPS that wishes to modify its registration.

14. On March 20, 2013, PNE filed a request with the Commission to modify its registration to indicate that PNE intends to serve both commercial and industrial (C&I) and residential customers. PNE's request is currently under review by the Commission.

15. In October 2011, in response to a Staff inquiry, PNE and Resident Power provided Staff with copies of Resident Power's notice to customers upon enrollment with PNE, and the PNE Terms and Conditions, which were provided to customers that entered into supply agreements with PNE. Staff requested revisions to the PNE terms and conditions, and PNE implemented those revisions.

16. Resident Power's notices to customers did not contain all information that Puc 2004.08(a) requires to be disclosed to customers within five days after a customer enters into an aggregation agreement with the customer. Going forward, Resident Power's notices to customers will contain all information required by Puc 2004.08(a).

17. In late January 2013, PNE entered into negotiations with FairPoint Energy LLC ("FairPoint") for the sale to FairPoint of PNE's residential and small commercial accounts in the PSNH service territory.

18. In the weeks before the PNE-FairPoint negotiations began, the New Hampshire Day-Ahead Locational Marginal Pricing ("DA LMP") for electricity available to NEPOOL members through ISO-NE had been far above the 2010 – 2012 historical average rate (of approximately \$.055 per kWh). The high rates had resulted in a corresponding increase in financial security required in PNE's financial assurance ("FA") account with ISO-NE. By the time PNE's negotiations with FairPoint began on January 30, 2013, rates had dropped to \$.0409 per kWh from a recent high of \$.2385 per kWh on January 25, 2013.

19. On February 6, 2013, PNE and Resident Power entered into an Account Purchase and Sales Agreement ("P&S Agreement"), for the transfer of approximately 8,500 PNE residential and small commercial accounts in the PSNH service territory. The parties executed an Amendment to the Agreement on February 14, 2013.

20. The P&S Agreement, as amended, states that each customer's aggregation agreement with Resident Power would terminate upon the "flow date" for each customer, meaning the date the customer actually began receiving power from FairPoint.

21. On February 7, 2013, PNE and FairPoint filed a Joint Petition for Expedited Waiver of Puc Rule 2004.05(k) with respect to providing a required 14 day advance notice of PNE's intent to sell its right to serve its customer accounts. (See DE 13-049.) When PNE filed the Joint Petition, PNE believed, and thus represented to Staff and the Commission, that PNE would be able to continue to meet its financial obligations to ISO-NE, and that the transfer of all PNE residential and small commercial customers to FairPoint service would be effectuated in an orderly manner, in the ordinary course of business.

22. On Friday, February 8, 2013, the Commission issued a secretarial letter granting the requested waiver of the 14-day notice requirement.

23. On February 13 and 14, 2013, the required notice was sent to the affected PNE customers notifying them of the transfer to FairPoint. The notice included the following statement, "Resident Power will no longer be an aggregator for your account but will cooperative with FairPoint Energy to assist in the transition between electricity suppliers." The notice did not specify a date upon which the aggregation agreement would terminate.

24. All PNE customer accounts sold to FairPoint were entered for enrollment in the EDI for transfer to FairPoint at the time of each customer's next regularly scheduled meter read.

25. On or about February 11 and 12, 2013, following the two-day notice period required by PSNH, PSNH began transferring PNE customer accounts to FairPoint at the rate of 300-400 accounts per business day, coincident with the affected customers' scheduled meter read dates as they occurred.

26. On February 12, 2013, PNE verbally inquired of PSNH as to whether it would be possible for PSNH to transfer on the same date all of the 8,500 PNE customer accounts sold to FairPoint, rather than to wait to transfer each account on the customer's next scheduled meter read date. On February 13, 2013, PNE informed PSNH that PNE was ready and willing to pay PSNH's estimated costs to execute a one-day transfer. On February 14, 2013, PNE sent PSNH a written Request for Special Off-Cycle Meter Reads. Also on February 14, 2013, PSNH informed PNE that PSNH "did not have the personnel resources necessary to manually transfer 8,500 customers to a new competitive supplier on the same, near-term date."

27. Approximately 1200 of the PNE customers were transferred from FairPoint and began receiving power from FairPoint. Approximately 7300 of PNE's customers were not transferred to receive power from FairPoint and were transferred to Default Service with a local utility, PSNH.

28. On February 21, 2013, Resident Power contacted the affected PNE customers to advise them that their accounts had not been transferred to FairPoint. In response to the notice, approximately 3,000 customers have, to date, confirmed their aggregation agreements with Resident Power and the remainder did not respond. Resident Power believes the aggregation agreements with those customers who did not respond are valid as the "flow date" to FairPoint did not occur.

29. On Friday, February 8, 2013, the DA LMP rate available to NEPOOL members was \$.1255 per kWh.

30. On February 8 and 9, 2013, a severe winter storm struck New England. Damage cause by the storm, including the disruption of power transmission lines, was a factor that contributed to further unanticipated and sudden increases in electricity prices. Prices remained at

extraordinarily high levels during the week of February 11, 2013, even as the New England region was experiencing unseasonably warm temperatures.

31. During this period, rates rose over 500%, increasing from \$.0409 on January 30, to \$.2415, \$.2241, and \$.2273 on February 10, 11 and 12, respectively.

32. As a result of these events, PNE was unable to continue meet its financial obligations with ISO-NE.

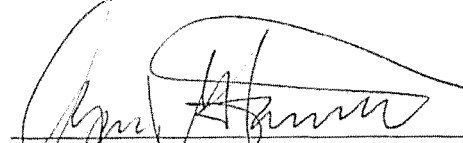
33. On February 13, Staff was first informed that PNE's financial default at ISO was imminent.

34. On February 20, 2013, ISO-New England suspended PNE's participation in the New England power market due to PNE's financial default before ISO-NE.

35. On March 22, 2013, PNE cured its financial default before ISO-NE.

Dated: March 26, 2013

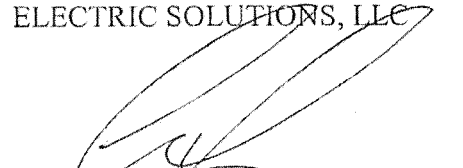
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Dated: March 26, 2013

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ELECTRIC SOLUTIONS, LLC



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