

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. _____

RESIDENT POWER, LLC

VERIFIED EMERGENCY PETITION FOR DECLARATORY JUDGMENT

Introduction

Resident Power LLC (“RP”) respectfully petitions the Public Utilities Commission (the “PUC” or “Commission”) for emergency review and (1) confirmation of RP’s status as a registered aggregator in good standing under PUC 2004.04, and (2) confirmation of RP’s authority to continue to act as an aggregator on behalf of certain former PNE electrical power supply customers, who as of February 20, 2013, and, as explained in more detail below, were transferred by the rules of the Independent System Operator for New England (“ISO-NE”) from competitive energy supply service with PNE Energy Supply, LLC (“PNE”) to default service with Public Service Co. of NH (“PSNH”). A proposed order is attached hereto as Exhibit A.

In addition, at the time of the transfer to PSNH default service, as mandated by ISO-NE, the PNE customer accounts for which RP acted and acts as aggregator were in the process of being transferred to another qualified and registered competitive electric power supplier (“CEPS”). PNE and RP are requesting the Commission to rule that, under the circumstances described below, transfer of these customer accounts to a competitive energy supplier does not constitute “slamming” under applicable state law and PUC rules, is otherwise permissible under applicable New Hampshire law and PUC Rules, and is in the best interests of the customers involved.

Background

1. RP is a limited liability company organized and existing under RSA 304-C.
2. RP is a duly registered aggregator pursuant to Part Puc 2003 for the purpose, *inter alia*, of providing aggregation services to New Hampshire electricity customers.
3. On February 6, 2013, PNE and RP entered into an Account Purchase and Sales Agreement (“P&S Agreement”) with FairPoint Energy LLC (“FPE”), pursuant to which approximately 8,500 residential and small commercial accounts in the PSNH service territory would be transferred from PNE to FPE.
4. By on or about February 8, 2013, all of these customers were duly enrolled in the PSNH electronic data interchange for transfer to FPE at the time of the next regularly scheduled meter read.
5. Beginning on February 9, 2013, and continuing through February 14, 2013, PSNH transferred certain PNE customer accounts to FPE at the rate of 300-400 accounts per business day.
6. On February 11, 2013, PNE sent out a notice to its customers announcing the agreement with FPE and the impending transfer of PNE customer accounts to FPE. That notice, attached as Exhibit B, contained the following statement: “Resident Power will no longer be an aggregator for your account, but will cooperate with FairPoint Energy to assist in the transition between electricity suppliers.”
7. On February 14, 2013, ISO-NE suspended PNE’s trading account from participation in the ISO-NE markets for financial default under ISO-NE rules. As a result ISO-

NE scheduled PNE's load asset account to be terminated at 12:01 AM on Wednesday, February 20, 2013.

8. For reasons that are not yet entirely clear to PNE Energy and RP, none of the relevant customer accounts were transferred by PSNH on Friday, February 15, 2013.

9. On Saturday, February 16, 2013, PSNH resumed transferring PNE customer accounts to FPE.

10. By the end of the day on Tuesday, February 19, approximately 1,196 PNE customer accounts had been successfully transferred to FPE.

11. On Wednesday, February 20, 2013, at 12:01 AM, pursuant to the ISO-NE Financial Assurance Rules, ISO-NE transferred the remaining PNE load asset at ISO-NE consisting of all PNE residential and small commercial customer accounts, including the remaining PNE residential and small commercial customer accounts that had not already been transferred to FPE— approximately 7,300 accounts – to the “host utility” for these accounts, PSNH. Upon receipt of this load asset from ISO-NE, on information and belief, PSNH assigned the customer accounts associated with this load asset moved to PSNH by ISO-NE to PSNH default service.

A. The RP Aggregation Agreements with Former PNE Customers are Valid

12. All of the former PNE customer accounts moved to PSNH default service by order of ISO-NE are aggregation customers of RP and have executed aggregation agreements in the forms attached hereto as Exhibit C, and appoint RP as their exclusive agent for the purpose, *inter alia*, of researching, negotiating and executing electricity supply agreements with electric energy suppliers where the competitive electricity rate will be lower than the posted utility rate, in this case, the PSNH default service rate.

13. Each RP aggregation customer is subject to certain terms and conditions. Attached hereto as Exhibit D are the RP standard terms and conditions. Section 5 of the RP standard terms and conditions provides that RP or any customer may cancel the aggregation agreement with RP provided any such notice of cancellation is in writing and provided to the other party no less than 30 days prior to expiration of the aggregation agreement.

14. RP has not sent and does not intend to send any written notice of cancellation to any of those customer accounts that were transferred from PNE competitive electricity service to PSNH default service on or after February 20, 2013.

15. As of February 21, 2013, RP has received approximately 5 written notices of cancellation from customer accounts that were transferred from PNE competitive electricity service to PSNH default service on February 20, 2013.

16. The intent of RP is to continue to work on behalf those customers who have not submitted to RP a written notice of cancellation in accordance with those Aggregation Agreements, and move their accounts off of the PSNH default service and to a CEPS with a rate plan that is lower than PSNH default service.

B. RP's Continued Representation of Customers Transferred to PSNH Default Service and Placement with CEPS Will Not Constitute "Slamming"

17. Based upon communications with PUC counsel, Petitioner understands that based on the statement in the PNE notice set forth at Paragraph 6 above, any attempt by Petitioner to place one of its aggregation customers now on PSNH default service as a result of the ISO-NE mandate described in Paragraph 11 above with a CEPS may constitute "slamming" under the Commission's rules.

18. Petitioner sought clarification of the PUC counsel's position, in an email dated February 20, 2013 from Robert P. Cheney, Esquire, to PUC counsel. While PUC counsel

responded, it has not provided sufficient or adequate clarification. The uncertainty surrounding the status of RP's relationship with its customers and the consequences of RP's doing business with and for those customers (to, for example, provide those customers with better rates than allowed by PSNH default service) is damaging RP's ability to do business and is having a deleterious impact on consumers of electric power in New Hampshire.

19. PUC 2004.10(b) defines "slamming" as follows: "For the purposes of this paragraph, slamming means initiating the transfer of a customer to a new CEPS or aggregator without the customer's authorization." PUC counsel's position – or indeed, its lack of clarity in respect to the position currently occupied by RP – requires a definitive judgment under these factual circumstances from the Commission.

20. Neither RP or, to the best of RP's knowledge, any customer of RP has sent the other party a written notice of cancellation pursuant to Paragraph 6 of the Resident Power Terms and Conditions, except as noted above in Paragraph 15. Thus, for staff or counsel for the PUC to assert that RP is no longer an aggregator for the PNE accounts intended to be, or being transferred to FPE, staff and counsel would have to claim that PNE was acting as an agent of Resident Power intending to cancel the aggregation agreements when PNE sent its notice to its customers on February 11.

21. While RP was a signatory to the Account Purchase and Sale Agreement between PNE and Fairpoint Energy, nothing in that agreement created an agency relationship empowering PNE to cancel the RP Aggregation Agreements. RP's aggregation authority remains in place with respect to its customers. Its communications "initiating the transfer of a customer to a new CEPS" cannot constitute slamming within the meaning of the PUC Rules.

C. RP's Re-Confirmation of its Representation of Customers Transferred to PSNH Default Service and Placement with CEPS Will Not Constitute "Slamming"

22. A cumbersome and, in light of the above, unnecessary alternative that Petitioner has initiated is to individually contact each of its customer accounts that were transferred to PSNH default service as described in Paragraph 11 above and request that customer to re-confirm and affirm that he or she desires RP to continue acting as an aggregator of his or her account in order to move from PSNH default service to a CEPS.

23. When contacted by Petitioner's counsel, PUC counsel could not provide an unequivocal response that RP's placement of its customers with a CEPS and the subsequent enrollment of such customers following re-confirmation and affirmation by RP's customers as described in Paragraph 22 would not constitute "slamming" under the Commission's rules given the facts outlined above.

24. As noted above, the uncertainty surrounding the status of RP's relationship with its customers and the consequences of RP's doing business with and for those customers is damaging RP's ability to do business and is having a deleterious impact on consumers of electric power in New Hampshire.

25. PUC counsel's position – or indeed, its lack of clarity in respect to the position currently occupied by RP – requires a definitive judgment under these factual circumstances from the Commission.

Relief Requested

Under the foregoing circumstances, RP seeks the following relief from the Commission:

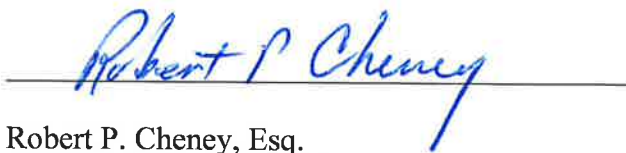
- A. An Order recognizing that the registration of Resident Power LLC as an aggregator of electric load under PUC 2003.04 has not been revoked, suspended or withdrawn, and remains valid and in full force and effect;
- B. An Order that no provision of the Commission's rules prohibits or prevents Resident Power from continuing to represent its customers in accordance with such terms and conditions, including those customers that were formerly customers of PNE Energy Supply, LLC ("PNE") for electric supply services, subject, of course, to cancellation by any customer of RP in accordance with the terms and conditions of the Aggregation Agreement between Resident Power and said customer;
- C. An Order that RP's, or any CEPS' to whom RP offers an aggregated load, proposed enrollment of those RP customers with whom an aggregation agreement exists, who were formerly customers of PNE and were transferred to PSNH default service on February 20, 2013, as a result of the suspension of PNE by ISO New England, for electric service to be provided by FairPoint Energy LLC or any other competitive electric power supplier at an energy service rate less than the PSNH default service rate, shall not constitute "slamming" under applicable New Hampshire law, including PUC 2004.10(b), provided such customer of RP has not provided notice of cancellation to RP in accordance with the terms and conditions of his or her Aggregation Agreement with RP on or before the date of enrollment of such customer in the applicable electronic data interchange; and

D. An Order that RP's, or any CEPS' to whom RP offers an aggregated load, proposed enrollment of those RP customers with whom RP has re-confirmed a prior aggregation agreement, who were formerly customers of PNE and were transferred to PSNH default service on February 20, 2013, as a result of the suspension of PNE by ISO New England, for electric service to be provided by FairPoint Energy LLC or any other competitive electric power supplier at an energy service rate less than the PSNH default service rate, shall not constitute "slamming" under applicable New Hampshire law, including PUC 2004.10(b), provided such customer of RP has not provided notice of cancellation to RP in accordance with the terms and conditions of his or her Aggregation Agreement with RP on or before the date of enrollment of such customer in the applicable electronic data interchange.

Dated: February __, 2013

Resident Power, LLC
By its Attorneys,

SHEEHAN PHINNEY BASS + GREEN, PA



Robert P. Cheney, Esq.
Two Eagle Square, Third Floor
Concord, NH 03301
(603) 223-2020
rcheney@sheehan.com

Christopher Cole, Esq.
Robert R. Lucic, Esq.
1000 Elm Street
Manchester, NH 03101
(603) 668-0300
ccole@sheehan.com
rlucic@sheehan.com

c

Verification of Allegations


The undersigned, Bart Fromuth, hereby certifies that the facts alleged in the foregoing
Petition are true and correct to the best of his knowledge and belief.



Bart Fromuth

STATE OF New Hampshire
COUNTY OF Merrimack

Sworn and subscribed to, before me, this 22nd day of February, by Bart Fromuth.



Print Name: Lori Gagne

Notary Public / My Commission Expires: 8/24/16

