

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

MOTION FOR CONFIDENTIAL TREATMENT AND FOR PROTECTIVE ORDER

Resident Power Natural Gas & Electric Solutions, LLC (“Resident Power”) and PNE Energy Supply, LLC (“PNE”) [collectively “Movants”], in accordance with Puc 201.04 and 203.08, move the New Hampshire Public Utilities Commission (the “Commission”) for a protective order providing for the confidential treatment of certain documents ordered to be produced in the above-captioned docket. In support of this Motion, Movants state as follows:

1. By Order of Notice issued on February 28, 2013, the Commission ordered Movants to produce information and documents to Staff no later than 9 a.m. on March 7, 2013. Movants requested – and the Commission granted – an extension of that deadline to 9 a.m. on March 12, 2013.
2. The Order of Notice directs Movants to produce 11 categories of documents and information to include customer lists, financial records, and other confidential corporate records and agreements. See Order, pp. 6-7. Movants’ response to the Order consists of a March 12, 2013 letter from undersigned counsel to the Commission, together with documents correlating to the categories of materials listed in the Order. A copy of Movants’ response is attached as Exhibit A.

3. Puc 203.08 states that “[t]he Commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law, based upon the information submitted pursuant to [Puc 203.08](b).” Further, Puc 201.04 exempts from public disclosure “[i]nformation about individual residential customers, the disclosure of which would constitute an invasion of privacy within the meaning of RSA 91-A:5, IV,” “[d]ocuments submitted in connection with an adjudicative proceeding pursuant to Puc 203.08,” “[d]ocuments subject to a protective order of the commission issued pursuant to Puc 203.08,” and “[o]ther documents entitled to confidential treatment pursuant to RSA 91-A or other applicable law.” Puc. 201.04, (a)(2)-(4), (6). RSA 91-A:5, IV, in turn, provides that records that contain “confidential, commercial, or financial information” and “personnel and other files whose disclosure would constitute an invasion of privacy” are expressly exempt from public disclosure. Id.

4. In determining whether to grant protective treatment, the Commission applies a three-step analysis as developed by the New Hampshire Supreme Court. See Unitil Corp. & Northern Utilities, DG 08-048, Order No. 25,014 at 3 (September 22, 2009) (citing Lambert v. Belknap County Convention, 157 N.H. 375, 382 (2008)). This analysis first requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. Second, where such a privacy interest is found to be at stake, the public’s interest in disclosure is assessed. Lambert, 157 N.H. at 382-83. Finally, where there is a public interest in disclosure, that interest must be balanced against any privacy interest in non-disclosure. Id.

5. Here, under established New Hampshire law, the following categories are documents must be treated as confidential information:

- Organizational charts for PNE, Resident Power, and related companies (attached at Tab 1 to Movants' 3/12/13 Letter);
- Corporate records demonstrating ownership of PNE and Resident Power (attached at Tab 2 to 3/12/13 Letter);
- PNE Financial balance sheets (attached at Tab 3 to 3/12/13 Letter);
- Existing projection of PNE's finances ear (attached at Tab 4 to 3/12/13 Letter);
- Projection of PNE's ISO-NE financial obligations (attached at Tab 5 to 3/12/13 Letter);
- Plan for curing PNE financial default and restoring its status with ISO-NE;
- Written communications with ISO-NE with respect to PNE's financial security obligations and ability to meet the same (attached at Tab 7 to 3/12/13 Letter);
- List of commercial and industrial customers of PNE (attached at Tab 8 to 3/12/13 Letter);
- Date each customer of Resident Power entered into an aggregation agreement and the date each notice provided by Resident Power to customers pursuant to Puc 2004.08(a)(2) was sent to the customer (attached at Tab 10 to 3/12/13 Letter);¹ and
- February 6, 2013 P&S agreement between PNE, Resident Power and FairPoint Energy; all documents related to PNE and Resident Power's respective obligations to notify customers of the transfer and/or termination of their contracts with PNE and Resident Power (attached at Tab 11 to 3/12/13 Letter).

6. These documents pertain to competitive business strategies, descriptions of Movants' operations, personal and private information concerning Movants' customers, and financial information related to these operations. They constitute highly sensitive information that is not available to the public and has not been published anywhere. Movants have taken significant measures to prevent the dissemination of this information in the ordinary course of

¹ Movants are not requesting that the notices provided by Resident Power to customers pursuant to Puc 2004.08(a)(2) be treated as confidential. These notices are attached at Tab 9 to the 3/12/13 Letter.

their business. Therefore, all of this information constitutes confidential, commercial, and financial information exempt from public disclosure under RSA 91-A:5, IV. In addition, information concerning Movants' customers constitutes "personnel and other files whose disclosure would constitute an invasion of privacy." See RSA 91-A:5, IV.

7. The disclosure of these documents would impair competition in the energy supply industry. Unrestricted access to them would provide Movants' competitors with insight and knowledge about their operations, customers, and business strategies.

8. Therefore, due to the highly sensitive nature of these documents, the Commission should treat them as confidential and limit access to them. They should only be used by the Commission for exercising its functions in this proceeding. There is no other legitimate purpose or public interest in disclosing these documents to any person other than the appropriate individuals on the Commission's staff.

9. Confidential treatment of these documents will not adversely affect any interested party or delay any aspect of this proceeding.

WHEREFORE, Movants respectfully request that the Commission grant a protective order allowing the documents identified above to be treated as confidential.

Respectfully submitted,

RESIDENT POWER NATURAL GAS &
ELECTRIC SOLUTIONS, LLC and
PNE ENERGY SUPPLY, LLC

By their attorneys,

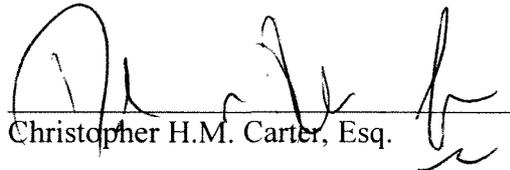


Christopher H.M. Carter (#12452)
Daniel M. Deschenes (#14889)
Robert M. Fojo (#19792)
Hinckley, Allen & Snyder LLP
11 South Main Street, Suite 400
Concord, NH 03301
Tel: 603.225.4334
ccarter@haslaw.com

Dated: March 12, 2013

CERTIFICATE OF SERVICE

I hereby certify that, on the above date, I have forwarded a copy of the foregoing to the persons listed on the service list via electronic mail, and U.S. mail for those unable to be served electronically.



Christopher H.M. Carter, Esq.

#51469804