

Carmody, Jody

From: Fojo, Robert M. <rfojo@HASLAW.com>
Sent: Wednesday, March 20, 2013 10:13 PM
To: PUC - Executive.Director; Iqbal, Al-Azad; Noonan, Amanda; Martin, Christina; Shulock, David; howard.plante@powernewengland.com; Mullen, Steve; Chamberlin, Susan W; Amidon, Suzanne; Frantz, Tom; bart.fromuth@residentpower.com; Eckberg, Stephen R.; alexander.spiedel@puc.nh.gov; Hollenberg, Rorie
Cc: Carter, Christopher H. M.; Deschenes, Daniel M; Comer, Susan M.
Subject: PNE/Resident Power (DE 13-059/60) - Objection to Staff's Emergency Motion for Hearing Postponement, Extension of Time, and Waiver
Attachments: Objection to Motion for Continuance # 1 51493137.pdf

Dear all:

Please find, attached, an electronic copy of PNE and Resident's Power's Objection to Staff's Emergency Motion for Hearing Postponement, Extension of Time, and Waiver.

Please let us know if you have any questions.

Regards,

Robert M. Fojo
Hinckley, Allen & Snyder LLP
11 S. Main Street, Suite 400 | Concord, NH 03301
p 603.545.6174 | f 603.224.8350

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**

**PNE ENERGY SUPPLY AND RESIDENT POWER OBJECTION TO EMERGENCY
STAFF MOTION FOR HEARING POSTPONEMENT, EXTENSION OF TIME, AND
WAIVER**

Resident Power Natural Gas & Electric Solutions, LLC (“Resident Power”) and PNE Energy Supply, LLC (“PNE”) (collectively, the “Respondents”) object to Staff’s Emergency Motion for Hearing Postponement, Extension of Time, and Waiver.

1. On 4:52 p.m. on March 20, shortly after the Commission issued Order 25,475 (holding that Staff will have the burden proof in this matter), Staff moved on an “emergency basis” to postpone the hearing for five days, from March 22 to March 27. Staff also seeks to extend the deadline for its discovery responses – from 9 a.m. on March 21, to 10 a.m. on March 22.

2. The instant Motion marks the second time in less than one week that Staff has sought to postpone the hearing. At the March 15 pre-hearing conference, Staff moved orally to postpone the hearing, citing similar arguments to those cited in today’s Motion. In essence, Staff alleged then, as now, that its counsel needs more time to prepare. The Commission agreed to postpone the start of the hearing from March 20 to March 22, but declined Staff’s request to delay this matter any further. Respondents submit that the Commission should not reconsider



that position. The Commission established an expedited hearing and discovery schedule in response to the request in the February 27 Staff Recommendation Memorandum that the hearing be scheduled “as soon as practicable.” Since February 27, Respondents have invested enormous time and resources to prepare for a hearing at which they intend to demonstrate that allegations in the Staff Memo are unfounded. Those allegations, which have been widely reported in the New Hampshire media, have jeopardized Respondents’ businesses and will continue to do so until the facts are aired.

3. As grounds for requesting a second postponement, Staff alleges that Respondents designated Staff Attorneys David Shulock and Suzanne Amidon as potential witnesses. However, Respondents have informed Staff, categorically, that they will not call Attorneys Amidon and Shulock as witnesses. See Exhibit A (3/20/13 Email from Attorney Carter). By way of background, when Respondents circulated their initial list of potential witnesses on March 15, they included Attorneys Amidon and Shulock as potential witnesses because it was not then known whether the testimony of Attorneys Amidon and Shulock would be necessary to establish the content of Staff’s prior representations to Respondents regarding events at issue in this case. On March 19, at a second pre-hearing conference, Respondents’ counsel advised it was highly unlikely they would need to call Attorneys Amidon and Shulock. Later, in an email sent at 1:16 p.m. the same day, March 19, Attorney Deschenes informed Staff, by email, that Attorneys Amidon and Shulock would not be called as witnesses provided Attorneys Robert Cheney and Harry Malone were permitted to testify. See Exhibit B (3/19/13 Email). Again, at 4:06 p.m. on March 20, Attorney Carter confirmed that Respondents will not call Attorneys Amidon and Shulock at the March 22 hearing. Thus, before filing the instant Motion, Staff was

well aware that Respondents were no longer calling Attorneys Amidon and Shulock as witnesses.

4. Staff cites no other basis to justify postponing the March 22 hearing. Further, the prior positions taken by Staff in this proceeding militate against the request for a second postponement. These positions include:

- a. As noted, in its February 27 Recommendation, Staff requested a hearing “as soon as practicable,” implicitly representing to the Commission that it would be prepared to proceed at short notice. The Commission accommodated this request and scheduled the hearing for the initial dates of March 20 and 22.
- b. In its Recommendation, Staff requested that Respondents be ordered to produce a large quantity of documents on very short notice. The Commission again granted Staff’s request, and Respondents timely produced the requested documents with only a minor extension.
- c. On March 7, 2013, Respondents requested Staff’s cooperation by assenting to a pre-hearing conference to address scheduling and other pre-hearing issues. Staff refused to assent to that request. Thus, Respondents were forced to file a motion for a pre-hearing conference.
- d. Respondents were requested to participate in another pre-hearing conference on March 19. At Staff’s request, Respondents spent approximately 10 hours drafting a proposed Stipulation of Facts that, it was hoped, would expedite the hearing. Respondents circulated the proposed Stipulation of Facts on the evening of March 19. As of this filing, they received no substantive response from Staff to the proposed Stipulations.
- e. At Staff’s request, Respondents and their counsel agreed to meet with Staff and Staff’s attorneys at the Commission at 10 a.m. today, March 20, based on the understanding that the meeting would be used to review Respondents’ proposed Stipulations, and discuss a possible resolution to this matter. Respondents’ Stipulations were not addressed, and the parties instead spent approximately three hours addressing issues relating to a potential resolution. At the conclusion of the meeting, Respondents agreed – again at Staff’s request – to draft factual material needed to continue settlement discussions, with the understanding that Staff would be in touch with Respondents’ counsel later in the day, after the factual material case circulated. At 3:20 p.m., Respondents’ counsel circulated the requested factual material. Despite several inquiries, Respondents

have received no substantive response from Staff regarding that effort, and, instead, filed this Motion.

5. Puc 203.13 states “[t]he commission shall grant a request for postponement of a hearing if it finds that to do so would promote the orderly and efficient conduct of the proceeding.” In addition, Puc 202.04 states the Commission “shall grant a request for extension of time if: (1) the party making the request has demonstrated that circumstances would cause undue hardship or inconvenience unless the request were granted; and (2) The extension would not unduly delay the proceeding or adversely affect the rights of any party.” (Emphases added)

6. Here, Staff has failed to explain how the postponement of the March 22 hearing would “promote the orderly and efficient conduct of the proceeding.” In addition, it has failed to demonstrate any “undue hardship or inconvenience” justifying its request for an extension. Staff makes these requests because it alleges it has been inconvenienced by a proceeding it initiated, a schedule it helped establish, and a compressed timeframe it has perpetuated, as demonstrated above. In addition, a further postponement would harm PNE and Resident Power, which will continue to suffer losses and damages as a result of Staff’s allegations, until the merits of those allegations are aired at the hearing.

7. Finally, regarding Staff’s request to delay the deadline for Staff to produce discovery, Respondents note that, to date, Staff has not produced a single document. This is so despite the fact that most of the materials requested through Respondents’ discovery requests, such as copies of any written customer complaints and copies of Staff’s recent email and correspondence with PSNH, should be readily available and, if so, could have been produced some time ago.

WHEREFORE, Respondents respectfully request that the Commission deny Staff’s Motion.

Respectfully submitted,

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

By their attorneys,



Dated: March 20, 2013

Christopher H.M. Carter (#12452)
Daniel M. Deschenes (#14889)
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Concord, NH 03301
Tel: 603.225.4334
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ddeschenes@haslaw.com

CERTIFICATE OF SERVICE

I hereby certify that, on the above date, I have forwarded a copy of the foregoing to the Office of Consumer Advocate via electronic mail, and 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.

#51493068

EXHIBIT A

Comer, Susan M.

From: Carter, Christopher H. M.
Sent: Wednesday, March 20, 2013 4:06 PM
To: 'Ross, F. Anne'
Cc: Shulock, David (David.Shulock@puc.nh.gov); Speidel, Alexander (Alexander.Speidel@puc.nh.gov); Amidon, Suzanne (Suzanne.Amidon@puc.nh.gov); Deschenes, Daniel M
Subject: RE: DE 13-059 and DE 13-060 Subpoena for Babara Clay

Anne, thank you for copying me on the email below. If you could include Dan Deschenes on all future communications, we would appreciate it. During the call yesterday morning, we understood the principal reason for Staff's potential request for an extension was the possibility of PNE and Resident Power calling one or more of the Staff Attorneys as witnesses. As I believe Dan Deschenes advised yesterday, we will not be calling any Staff Attorney to testify. In addition, please let us know how you would like to proceed with regard to the proposed Factual Stipulations that we submitted last evening. Thank you, Chris

Christopher H. M. Carter
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From: Ross, F. Anne [<mailto:F.Ross@puc.nh.gov>]
Sent: Wednesday, March 20, 2013 3:55 PM
To: Jan Fox
Cc: Speidel, Alexander; Carter, Christopher H. M.; Ignatius, Amy; Barbara Clay
Subject: RE: DE 13-059 and DE 13-060 Subpoena for Babara Clay

Yes, Jan. We did talk settlement, but have not reached one yet. I believe that Staff will request a continuance of the Friday hearing later today. If that occurs, I will let you know immediately. Thanks again for your cooperation.

From: Jan Fox [<mailto:jfox@criusenergy.com>]
Sent: Wednesday, March 20, 2013 3:18 PM
To: Ross, F. Anne; Jan Fox
Cc: Speidel, Alexander; ccarter@haslaw.com; Ignatius, Amy; Barbara Clay
Subject: RE: DE 13-059 and DE 13-060 Subpoena for Babara Clay

Ms. Ross

Given Barbara and I have to make travel arrangements and time is now short do you have any update from the meeting today?

Best,
Jan

From: Ross, F. Anne [<mailto:F.Ross@puc.nh.gov>]
Sent: Tuesday, March 19, 2013 5:15 PM
To: Jan Fox
Cc: Speidel, Alexander; ccarter@haslaw.com; Ignatius, Amy
Subject: DE 13-059 and DE 13-060 Subpoena for Babara Clay

Dear Ms. Fox,

The Commission has authorized issuance of the attached subpoena in the above captioned dockets for Barbara Clay's attendance at the hearing scheduled for March 22, 2013 at 9:00 a.m.

Thank you for agreeing to cooperate with this process and for accepting electronic service of the subpoena. I will keep you informed on progress in this matter.

Please feel free to contact me if you have any questions.

Anne Ross

EXHIBIT B

From: Deschenes, Daniel M
Sent: Tuesday, March 19, 2013 1:16 PM
To: 'david.shulock@puc.nh.gov'; suzanne.amidon@puc.nh.gov; 'f.anne.ross@puc.nh.gov'
Subject: RP/PNE
Importance: High

Suzanne and David:

Could you please forward the Word Document of the Order of Notice as discussed?

Attorney Ross: Relative to the witness list, PNE and RP would agree to removing Attys. Shulock and Amidon from their witness list provided that the Commission allowed the testimony of Harry Malone and Bob Cheney.

Regards, Dan

Daniel M. Deschenes
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