

**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**

ORDER OF NOTICE

On February 27, 2013, the Electric Division and Consumer Affairs Division staff of the New Hampshire Public Utilities Commission (Commission) filed a recommendation requesting that the Commission schedule a show cause hearing as to whether Resident Power Natural Gas & Electric Solutions, LLC (Resident Power) and/or PNE Energy Supply, LLC (PNE) should be subject to penalties or suspension or revocation of their registrations pursuant to NH Admin. Code Puc 2005. Resident Power and PNE Energy filed a joint response to Staff's recommendation on February 28, 2013. Resident Power is a registered aggregator under N.H. Code Admin. Rule 2003. See Docket No. DM 11-081. PNE is a registered competitive electric supplier under N.H. Code Admin. Rule Puc 2003. See Docket No. DM 11-075. Staff states that the two companies are affiliated.

Staff's recommendation summarizes a recent and unprecedented series of events. For the first time since retail competition was established in the New Hampshire electric industry, a competitive electric supplier, PNE, has been suspended by ISO-New England (ISO-NE) as a

market participant following a financial default.¹ PNE's default and ISO-NE suspension resulted in PNE's inability to obtain any electric supply to serve its customers. Consequently, PNE's default and ISO-NE suspension also resulted in approximately 7300 former Resident Power and PNE customers being transferred to default service provided by their host utility, in this instance Public Service Company of New Hampshire (PSNH). PNE's cessation of its core business, *i.e.* its inability to serve its electric customers, was apparently without prior notice to those customers, although Resident Power provided some notice to former PNE customers after-the-fact. Likewise, the transfer of customers to PSNH default service was apparently without prior notice to customers from either Resident Power or PNE.

PNE's financial default and ISO-NE suspension occurred shortly after PNE and Resident Power entered into a purchase and sale agreement that was intended to transfer approximately 8500 customers from PNE and Resident Power to FairPoint Energy, LLC (FairPoint Energy), another registered competitive electric supplier. Although PNE was required under the Commission's rules to provide fourteen days advance notice to customers of the transfer of their accounts, PNE requested and was granted a waiver of this advance notice requirement.² On February 13 and 14, 2013, PNE mailed notices dated February 11, 2013, to its and Resident Power's customers stating that, among other things, their accounts would be automatically

¹ A New Hampshire Business Review article dated February 20, 2013, quotes August "Gus" Fromuth as saying "It was a financially related suspension." The article identifies Mr. Fromuth as the managing director of related companies Resident Power and PNE. Additionally, Resident Power represented that PNE suffered a financial default and suspension under ISO-NE rules in Docket DE 13-057.

² PNE's shedding of its residential and small commercial customer load and request for a waiver caused the Commission to question PNE's continued viability. While the Commission granted the waiver in Docket DE 13-049 to facilitate moving customers from PNE to FairPoint Energy as quickly as possible, the Commission also directed Staff to commence an investigation into PNE's CEPS authorization and the circumstances that necessitated the requested waiver. See Docket No. DE 13-049, Secretarial Letter dated February 8, 2013.

assigned to FairPoint Energy, they would continue to receive the same rates and contract terms from FairPoint Energy as they did from PNE, and “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.” PNE defaulted on its financial obligation at ISO-NE on February 14, 2013, the very same day that it mailed this notice to customers.

Shortly before midnight on February 21, 2013, Resident Power sent a notice to its and PNE’s former customers informing them that their accounts were now being serviced by PSNH. Resident Power asked these former PNE customers to “reconfirm” their aggregation agreement with Resident Power. Resident Power stated that for customers who reconfirmed, Resident Power would work to find an alternative supplier; customers who did not reconfirm would remain PSNH default service customers. On the morning of February 22, 2013, Resident Power filed a petition in which PNE and Resident Power sought rulings that former customers of PNE could be transferred out of PSNH default service under described circumstances without the transfers constituting “slamming”³ and in which Resident Power sought a declaration of its good standing under the Commission’s rules.

As of today, it does not appear that PNE has informed its former customers of its financial default and ISO-NE suspension, or of their transfer to PSNH default service. Nor has it informed its customers or the general public of the contents of a letter dated February 15, 2013, for which PNE requested confidential treatment, and filed in Docket DM 11-075.

Staff also alleges that PNE has been enrolling nonresidential customers since the first quarter following the Commission’s approval of its registration to supply residential customers in Docket DM 11-075.

³ “Slamming” is defined in NH RSA 374:28-a as “any practice that changes a consumer’s . . . energy-related service . . . provider without the customer’s knowledge or consent.”

PNE's and Resident Power's actions and inactions, along with media accounts, have caused significant customer concern and confusion. Between February 20 and 22, the Consumer Affairs Division received 83 complaints from PNE and Resident Power customers. Customers complained of confusion regarding the information in the notices sent by PNE and Resident Power, some of which is contradictory, as well as confusion regarding the options available to them. PNE has yet to provide a clarifying notice, while Staff alleges the notice provided by Resident Power has served only to create further customer confusion.

Staff has requested a combined proceeding, based upon Staff's observations of the interrelatedness of the companies and of the issues. Additionally, Staff has identified a number of Commission administrative rules that may have been violated by either PNE and/or by Resident Power. These include Rules 2003.01(d)(2), maintaining the ability to obtain supply in the New England energy market; 2003.01(i) maintaining compliance with the requirements of Puc 2000; 2004.05 (m), providing a copy of notices described in 2004.05(m) to the Commission at the same time notice is sent to affected customers; 2004.07(f), providing notice to affected utilities, customers, and the Commission prior to ceasing operations; 2004.08(a)(2) providing notice to customers of the nature of any business relationships or affiliations between aggregators, CEPS, or utilities; and 2006.01(a)(11) stating intent to serve customer classes in an application.

Based on the circumstances as described in Staff's recommendation, Docket No. DM 11-075, Docket No. DE 13-049, and Docket No. DE 13-057, and circumstances leading up to Docket No. DM 11-081, the Commission will explore possible violations of the Puc 2000 rules identified by Staff, as well as: Rule 2003.01(b), selling or offering to sell electricity to a customer prior to registration approval; Rule 2003.04(i) maintaining compliance with the

requirements of Puc 2000; and Rules 2003.02(i) and 2003.04(j), failure to notify the Commission of changes in information; Rule 2003.03 failure to notify the Commission prior to providing aggregation services; and Rule 2005.01(d)(1) willful misrepresentation of information required by Puc 2003. Lastly, the Commission is concerned with the possibility of false, misleading, or incomplete statements made to obtain relief from Commission rules.

In their joint response to Staff's recommendation, Resident Power and PNE make preliminary arguments that Rule 2005 is applicable only to CEPS and that certain of the rules are inapplicable to PNE under the circumstances. PNE argues that Staff is mistaken regarding whether PNE has continued to enroll commercial and industrial customers and surmises that Staff may have been willfully and intentionally misled. PNE asks that the Commission consider the information that it provided prior to the issuance of this Order of Notice, which the Commission has done, and suggested that the Commission schedule a technical session rather than a hearing at this time.

The Commission finds that a combined proceeding to determine whether violations have occurred, whether any sanctions are appropriate, and whether any reparations to customers should be made, will best serve the interests of justice and provide a speedy resolution of issues so that the competitive markets may continue to function efficiently. The level of customer confusion and the integrity of retail competition in New Hampshire compel the Commission to act expeditiously in this matter. Accordingly, the Commission will commence its joint investigation with an order to produce the information and documents listed below, along with any motions for confidential treatment, to Staff no later than 9:00 a.m. on March 7, 2013.

1. An organizational chart or charts that details the corporate structure of PNE, Resident Power and all other companies related by ownership, key employee, officer, director or member in a detailed manner that shows the names of such owners, officers, directors, members, and key employee, and which breaks ownership down to individuals;
2. Corporate records of the companies demonstrating ownership of PNE and Resident Power;
3. Financial balance sheets for PNE, prepared in accordance with GAAP, for the months November 2012 through March 2013, inclusive.
4. Any type of existing projection of PNE's finances for PNE's current and prior fiscal year, or calendar year if different;
5. Any type of existing statement, projection, or estimation of what PNE's ISO-NE financial obligations would be for the months of November 2012 through April 2013, inclusive;
6. A business plan and financial pro forma that demonstrate PNE's plan for curing its financial default and restoring its status with ISO-NE;
7. Copies of all written communications to or from ISO-NE with respect to PNE's financial security obligations and ability to meet the same, and all written communications to or from ISO-NE with respect to the suspension of PNE's trading account and termination of PNE's load asset account;
8. A list of all commercial and industrial customers of PNE, both present and past, including an indication of which customers were aggregated by Resident Power;

9. A copy of all notices provided by Resident Power to its customers pursuant to Puc 2004.08(a)(2); (if the notice is identical for all or a group of customers, then a sample may be provided);
10. The date each customer of Resident Power entered into an aggregation agreement and the date each notice referred to in item #9 above was sent to the customer;
and
11. A copy of the February 6, 2013 Purchase and Sale agreement entered into by PNE, Resident Power and FairPoint Energy and 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.

Additionally, the Commission will hold a hearing on March 20, 2013, and if necessary on March 22, 2013, at which time Resident Power and PNE must show cause why either company should not be subject to sanctions pursuant to N.H. Code Admin. Rule Puc 2005 and the Commission's general supervisory powers.

Lastly, although PNE's New Hampshire CEPS registration has not been suspended or revoked, PNE has been suspended by ISO-NE and cannot obtain supply in the New England market to serve its customers. Additionally, Resident Power has indicated that PNE has temporarily and voluntarily suspended some business operations in New Hampshire. For these reasons, we order PNE to cease enrolling new customers pending the outcome of this docket. Until further notice, New Hampshire electric utilities will not be required to accept or process any new customer enrollments from PNE, to the extent they receive any.

Subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, will be posted to the Commission's website at

<http://puc.nh.gov>. Each party has the right to have an attorney represent the party at the party's own expense.

Based upon the foregoing, it is hereby

ORDERED, that PNE Energy Supply, LLC and Resident Power, LLC shall provide to Commission Staff the information and documents listed in numbered paragraphs 1-11 above in paper and electronic format no later than 9:00 a.m. on March 7, 2013; and it is

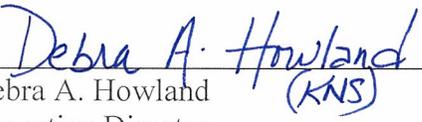
FURTHER ORDERED, that PNE Energy Supply, LLC and Resident Power, LLC shall appear at a hearing on the merits to be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on March 20, 2013, and if necessary March 22, 2013, at 10:00 a.m., to show cause why either company should not be sanctioned under N.H. Code Admin. Rule Puc 2005 and the Commission's general supervisory powers; and it is

FURTHER ORDERED, that PNE Energy Supply, LLC shall immediately cease enrolling new customers, and shall not enroll any new customers during the pendency of this proceeding; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to PNE Energy Supply, LLC and Resident Power, LLC and the Office of the Consumer Advocate on or before March 14, 2013, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Code Admin. Rule Puc 203.17 and RSA 541-A:32, I(b); and it is

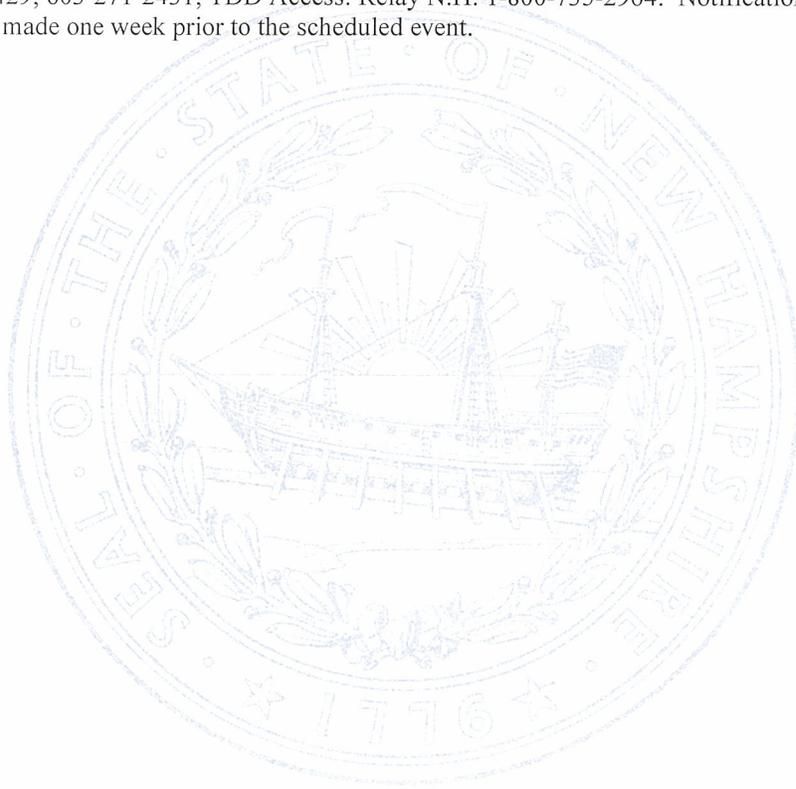
FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before March 19, 2013.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of
February, 2013.



Debra A. Howland
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.



SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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