



**Public Service
of New Hampshire**

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**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

RESIDENT POWER NATURAL GAS & ELECTRIC SOLUTIONS, LLC
DE 13-059

PNE ENERGY SUPPLY, LLC
DE 13-060

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

**Public Comment of Public Service Company of New Hampshire
Pursuant to Rule Puc 203.18**

March 26, 2013

I am Robert Bersak, Assistant Secretary and Associate General Counsel of Public Service Company of New Hampshire ("PSNH"). PSNH appreciates the opportunity to make this public comment pursuant to the Commission's rules.

The purpose of today's hearings is to hear evidence to determine whether Resident Power or PNE have violated the Commission's rules governing the competitive electricity marketplace. This is not a hearing about PSNH. PSNH is present today to answer questions at the request of Commission Staff.

However, because PSNH is neither a party nor an intervenor in today's dockets, we deem it necessary to provide this public comment to succinctly state its position concerning certain aspects of the subject matter of these proceedings that relate to PSNH.

Ever since PNE made what it has deemed a “voluntary” business decision to walk-away from its obligations to its customers, PNE and Resident Power have cast blame for their predicament and the impact to customers on PSNH. They did this in myriad formal filings with this Commission as well as in the media. But, PSNH did not cause the problems facing PNE and Resident Power - - they did that on their own.

Like many thousands of other New Hampshire residents and businesses, PSNH has not profited, but has suffered harm as a result of PNE’s decision to default at ISO-New England, of PNE’s decision not to cure that default, and PNE’s resulting immediate suspension from the New England wholesale electricity marketplace. PNE made those decisions – not PSNH, not Commission Staff, not anyone else. But PSNH, Staff, and this Commission have been left to clean up the chaos and confusion that PNE and Resident Power have created, and have been the targets of their blame.

In the Respondents’ pre-hearing memorandum filed just last week, they begin their explanation of the events leading up to their deal with FairPoint in November of last year. But, according to their filings, they did not reach a deal to sell approximately 8,500 of their customers to FairPoint until Wednesday, February 6. On February 7, PNE, Resident Power and FairPoint jointly asked the Commission to waive certain consumer protection rules in order to allow their transaction to move ahead immediately, foregoing prior notice that the Commission’s regulations would normally require.

In support of that filing, they told the Commission, “No special off-cycle meter read dates will be necessary as a result of this transfer. Customers will transfer suppliers upon their next scheduled meter read date.” They also stated, “There will be no risk or detriment to PSNH as a result of this transfer or requested waiver.” and, “Furthermore, there will be no risk or detriment to the transferred customers.” Based on the content of their Petition, the Commission granted their request for waiver the next day, Friday, February 8.

As noted in the Respondents’ Joint Petition for Waiver, in New Hampshire’s competitive electricity marketplace, transactions take place upon a customer’s next scheduled meter read date. These transactions are implemented via an Electronic Data Interface, or EDI, system that was established by this Commission in 1998. As part of this Commission’s EDI protocol, suppliers are responsible for submitting inputs into the EDI system detailing who serves a customer’s account, the rate that customer pays, and other aspects of the customer/supplier relationship. The accuracy and timeliness of those inputs are the responsibility of the suppliers – neither PSNH nor any of the other utilities in this state, enter that data. EDI transactions submitted by a supplier to a utility’s EDI system are not implemented until a customer’s next meter-read date following a two business day waiting period. This waiting period, too, is part of the EDI rules implemented by this Commission – it is not a PSNH policy, as stated by Respondents in their pre-hearing memo..

In its February 22 “Verified Emergency Petition for Declaratory Judgment” docketed as DE 13-057, Resident Power stated that “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 their next regularly scheduled meter read.” In their pre-hearing memorandum, this date changed, when the Respondents said “On or about Saturday, February 9, all PNE customers that were 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.” In fact, neither of these statements is correct. On February 8, only 8 FairPoint enrollments were submitted to PSNH’s EDI system. On February 9, there were 905, and on Sunday, February 10, no EDI transactions were submitted for enrollments by FairPoint. It was not until February 14 through 16 that the majority of EDI transactions transferring customers to FairPoint were received by PSNH’s EDI system - - over a week after the dates alleged by the Respondents in their pleadings.

As I indicated, utilities in this state do not routinely get involved in the EDI transaction process. Once a transaction is properly entered, that EDI transaction is implemented upon the customer’s next meter read date. As a result of the EDI transaction entries, customers sold by PNE to FairPoint began getting transferred to FairPoint in the normal course of business beginning on February 11.

It was not until Tuesday, February 12, that PSNH had any direct contact from PNE regarding this matter. That was the date when PSNH was contacted by counsel for the Respondents, and was asked whether it would be possible to deviate from the normal course of business. Up until that call, PSNH had no participation in and little knowledge of the PNE/Resident Power/FairPoint deal.

The call from PNE’s attorney on Tuesday the 12th came to me, and I was asked whether PSNH was aware of the PNE/Resident Power/FairPoint deal. I related that the only awareness I had was what was available from the NHPUC website’s docketbook in Docket No. DE 13-049 that had been posted that morning - - i.e., that PNE had agreed to sell approximately 8,500 customer accounts to FairPoint; that the Respondents and FairPoint had sought and obtained a waiver of a consumer protection rule; that no special off-cycle meter read dates would be necessary as a result of the transfer of customers; and, that all customers would transfer to FairPoint upon their next scheduled meter read date. All the other details of the transaction had been redacted and kept confidential, and those details remain confidential as of today.

Counsel for PNE asked me whether it would be possible for PSNH to transfer all 8,500 customer accounts being sold by PNE to FairPoint on the same date, instead of waiting to transfer those accounts at each customer’s next meter read date, and, if so, whether such transfer could take place very quickly (such as the next business day). Counsel also informed me that PNE was extremely anxious to have PSNH accelerate the transfer if possible, and was willing to offer certain enticements, including: i. withdrawal of its petition against PSNH pending in NHPUC Docket No. DE 12-295; ii. cessation of opposition to PSNH’s request for an alternative default energy service rate in Docket No. DE 11-216; and, iii. the filing by PNE of testimony in Docket No. DE 12-097 opposing the imposition of a mandatory Purchase of Receivables program in New Hampshire. I responded that I did not know if we could do what was requested, but would check to see if that was possible.

Following that phone call, I began making initial inquiries regarding PSNH's ability to transfer all 8,500 customers on the same date, in the near term. I was informed that such a request was a deviation from both the normal business practice in the marketplace and the terms of PSNH's Tariff, and would require a totally manual process which would be cumbersome to implement and costly to perform. Before going any further, I contacted Respondents' counsel to determine whether his client would be willing to pay for the special services they requested. He did not know, but agreed to check.

Counsel called me back the next day and told me that PNE was willing to pay for the special service requested. Based on that, I said I would get a detailed response to his question. The earliest available time I could schedule a meeting with the necessary internal personnel (who were located in New Hampshire, Connecticut, and Massachusetts) was at 8:30 a.m. the next morning, Thursday, February 14.

During that meeting, it was determined 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. Each transaction would require manual entry of new account information; new supplier information; the new supplier's customer account number; asset IDs; rate information; billing options; and an estimated meter-read. For customers with more than one meter, like me because I have an electric water heating rate, this would have to be done separately for each meter. This manual process would take a significant amount of time, and was subject to many errors as a result of the tedious manual data-entry process. For example, just one piece of information, the new FairPoint customer account number, consists of 14 digits, for example, 51390178358253. Putting all the necessary information in manually for over 8,000 customers would be a massive undertaking, requiring more qualified personnel than we had available.

Moreover, there were concerns that if other suppliers requested similar treatment, it would be impossible to accommodate such requests. It would be unfair to vary from our Tariff and treat one supplier differently than another.

Hence, compensation was not the driving issue - - PSNH was not able to accommodate PNE's request because we just could not do it due to the lack of necessary resources. This decision was discussed with Commission Staff immediately following PSNH's internal February 14 meeting, and immediately thereafter, I contacted counsel for the Respondents with that decision.

A few hours later, by email sent at 3:11 p.m., PNE sent a request asking PSNH to send meter readers to all 8,500 customers that it intended to sell to FairPoint and perform special off-cycle meter readings. These customers were located throughout the state of New Hampshire - from Coös County in the north, and south to Massachusetts and the Seacoast, and virtually every town in-between. But at 4:38 p.m., a mere 87 minutes later, ISO-New England informed PSNH that PNE had been suspended from the ISO-NE marketplace. ISO-NE also stated that PNE's suspension was effective immediately because PNE had waived its right to cure, and that per the FERC-regulated ISO-NE Tariff, all

customer load served by PNE must be retired and assumed by PSNH by the end of the day on Tuesday, February 19. (Recall that Monday, February 18 was a federal holiday.)

Upon receiving that notice from ISO-New England, PSNH assembled a project team to carry out ISO-NE's mandate. The effort required to retire PNE's load asset at ISO-NE and to transfer retail customer accounts to PSNH's default energy service over a three-day holiday weekend was daunting. That effort continued on a 24/7 basis throughout the weekend in order to meet the ISO-NE Tariff deadline. We kept Commission Staff informed of our efforts, and with the hard work of our IT and Customer Service areas, we met the required deadline.

All customers of record being served by PNE as of 0001 hours on Wednesday, February 20, were transferred to PSNH's default energy service. All EDI transactions in the system for customers with meter read dates on or before February 19 moving customers to FairPoint were implemented. All remaining EDI transactions in the system pertaining to transfers of customers from PNE to FairPoint were deleted from the EDI system upon those customers being placed on PSNH's default energy service.

I want to emphasize that this was a tremendous effort requiring a substantial amount of time and resources, which was costly to PSNH. Many thousands of data entries had to be handled manually in order ensure that customers would ultimately be billed correctly. Customers on budget billing; those with bill payment plans; net metered accounts; accounts with submeters or additive/subtractive meters; all customers with demand meters; all accounts in PSNH's large power billing system, and various other situations each required special handling. And, every one of the more than 7000 accounts that had to be transferred without a meter reading required PSNH to implement the changes based upon estimates of that customer's electricity usage. The effort over that holiday weekend cost PSNH approximately \$40,000 in personnel and computer programming costs.

In the Respondents' pre-hearing memorandum, they repeatedly blame PSNH for their situation. Indeed, they include an entire section entitled "PSNH's Interference With the Transfer of Customers to FairPoint."

For example, in their pre-hearing memo, Respondents state, "The evidence will show that transfer of customer accounts was thwarted by PSNH in an opportunistic effort by PSNH to profit from PNE's default." These allegations are not true.

First, PSNH had no knowledge that PNE was going to default at ISO-NE. Respondents themselves have deemed that default to be a voluntary business decision. Virtually all the materials discussing the Resident Power/PNE/FairPoint transaction have been kept confidential - - PSNH has had not access to those documents. PSNH had no way of knowing whether PNE was facing default, whether it had sufficiently hedged its customers' electricity needs in the marketplace, or whether FairPoint had made some agreement to step-in and act if need be.

Second, upon ISO-NE's action suspending PNE from the New England marketplace, PSNH handled the matter in accordance with the FERC-regulated ISO-NE Tariff, this Commission's rules, the Commission's EDI protocol, and PSNH's Commission-approved Tariff. Customers continued to be transferred from PNE to FairPoint up through February 19 – the last day PNE had the legal authority to be their supplier.

Third, there was no opportunity for PSNH to profit from PNE's default. Anyone who is familiar with our default energy service rate knows that PSNH does not make any more or less profit based upon the level of default energy sales. As a fully reconciling cost-of-service regulated rate, PSNH's profit from energy sales is comprised only of a return on our generation rate base. Any revenues above or below what is necessary under that regulated rate gets reconciled in a proceeding before this Commission, and either returned to, or collected from, customers. The fact of the matter is the Company has incurred tens of thousands of dollars in additional costs dealing with this matter, with more time, effort and resulting expense continuing to occur.

Moreover, PSNH had significant concerns regarding the effect of PNE's default on customers taking default energy service. As the Respondents noted in the pre-hearing memo, on February 13, the day prior to their default, the wholesale market price of electricity was over 18¢/kWh – nearly double the rate PSNH charges its energy service customers. We were concerned that the mass return of over 8,000 customers during this high-cost period would ultimately raise costs for all other default energy service customers.

Hence, the accusation that the transfer of customer accounts was thwarted by PSNH in an opportunistic effort by PSNH to profit from PNE's default is nothing more than an effort to divert blame away from the Respondents' themselves.

Similarly, the Respondents' prehearing statement says, "The applicable tariff allowed PSNH to make the requested 'off-meter' transfers, and PNE offered to pay PSNH for all additional costs associated with the transfers." That statement is also untrue.

PSNH's Tariff does not allow PSNH to make the requested "off-meter" transfers. In fact, PSNH's Commission-approved Tariff clearly states that customer transfers to or from a supplier will occur on the next regularly scheduled meter reading cycle date for the Customer.

Contrary to the Respondents' allegations, there is absolutely nothing in our Tariff that would allow PSNH to make the requested "off-meter" transfers. If PSNH had determined that moving the customers all on one day as requested by PNE was possible, we would have had to seek from this Commission a waiver of our normal Tariff provisions. Once again, the Respondents' attempt to blame PSNH for their situation is unfounded and unwarranted.

In their pre-hearing memo the Respondents also fault PSNH for not properly interpreting the terms of their deal with FairPoint. They state, "In addition, PSNH's position ignored

the terms of the FairPoint P&S Agreement, which provided that it was only after a customer was transferred FairPoint that Resident Power would no longer be the aggregator for that customer.”

That accusation is particularly bizarre. PSNH does not have any information about the terms of the FairPoint P&S Agreement. PSNH was not a party to that contract, was never provided a copy of that contract, and has been prohibited from reading that contract by the Respondents’ motion for confidential treatment. Yet the Respondents complain that PSNH has ignored the terms of that contract. Some day we would like to see that purchase and sale agreement so that we can learn what we have been accused of ignoring.

The Respondents end their pre-hearing statement by saying, “the events of February 2013 show no reckless or deceptive behavior on the part of PNE and Resident Power. Rather, PSNH thwarted the transfer of the customer accounts in an opportunistic effort to profit from PNE’s financial default.”

My statement today demonstrates that this claim of the Respondents is just not true. PSNH in no way thwarted PNE’s efforts. In fact, PSNH made a good-faith inquiry to determine whether it could accommodate PNE’s request to perform the transfer of customers immediately.

And thwarting the transaction would produce absolutely no financial gain for PSNH. To the contrary, the entire ordeal has cost PSNH many tens of thousands of dollars.

It is up to the Commission to determine whether the Respondents conduct demonstrates any reckless or deceptive behavior.

Thank you for your attention, and for the opportunity to present these comments.

ADDENDUM TO PUBLIC COMMENT OF PSNH Re: SETTLEMENT AND STIPULATION

Docket Nos. DE 13-059 and 13-060

March 27, 2013

We arrived at this hearing today expecting to testify and to respond to questions that the Commissioners may have. Instead, we are met with a stipulation and settlement that was submitted well after the close of business last night.

Our initial read of this document is that the Settlement and Stipulation falls woefully short in many areas.

The settlement contains only six substantive settlement terms in Article II. One of those, 2.2, shouldn't even be a separate paragraph. Another, paragraph 2.3, like most of the substantive materials regarding this matter, is redacted. A settlement involving and affecting the public at large deserves more, and should be open and transparent, not cloaked in confidentiality. The Settlement contains little substance at all.

First and foremost, it appears that the customers most affected by it will not be fully compensated by the terms of the settlement. A liquidated offer to pay \$9.50 per customer likely falls short of full compensation. And, to receive that seemingly inadequate compensation, customers must waive any claims against PNE. All entities damaged as a result of this situation should be fully compensated for their damages.

The settlement fails to even discuss the fate of over two hundred customer accounts that were wrongly included in the EDI transactions for transfer to FairPoint. These customers were receiving their electricity not from PNE, but from other competitive suppliers. Yet, they were included in the EDI transactions submitted by FairPoint as part of the PNE/FairPoint deal. Because these transactions did not involve customers moving from PNE to FairPoint, they were not identified and dropped from the EDI system upon PNE's default. Instead, the EDI system worked as intended - - as these customers' meter read dates occurred, they were transferred to FairPoint - - most all of them at a higher rate. This matter only came to light when one of these customers received a demand for an early termination payment from their previous, and correct, supplier, and complained to this Commission. With the assistance of the Commission's consumer affairs director, FairPoint reviewed the list of over 200 suspect customers' accounts slated for transfer. Only a small number of those were indeed correct. For the remainder, FairPoint immediately initiated drop transactions in the EDI system. But, for all but a handful, it was too late. The majority of the affected customer accounts had already been switched to FairPoint on their meter read dates. Bills had been rendered. Load responsibility for the electricity had already

been assigned in the ISO-NE wholesale market. And – FairPoint’s drop transaction will ultimately result in the customers who were wrongly switched by the erroneous EDI inputs to revert to PSNH’s default service. There is no quick or economical way for PSNH to fix the continuing problem for these 150 to 175 accounts. It would not just be a bill adjustment to make customers whole - - it would entail cancellation of bills already rendered; re-billing; adjusting payments made to suppliers for those affected accounts that have already been billed; it would mean readjusting load responsibility in the ISO-NE marketplace back to mid-February. This matter is not even discussed in the settlement document. PNE must agree to take responsibility for fully compensating the customers who were unknowingly impacted by this situation.

The settlement and stipulation completely avoids discussion of the matters I discussed earlier in my remarks. There are no admissions of errors, mistakes, or inaccuracies in their prior pleadings made with this Commission. There is no retraction of their unwarranted casting of blame on others – in particular PSNH. And, there is no agreement to compensate PSNH for the tens of thousands of dollars that the Company had to spend to clean-up the mess created by PNE’s admittedly “voluntary” default and “Voluntary” suspension of business. We did so, quickly, efficiently, in full cooperation with the Commission’s Staff, and in a manner that minimized the impact to customers.

If there is going to be a settlement approved by this Commission, PSNH and all impacted customers deserve to be fully compensated for the costs caused by PNE’s actions.