

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 Addressing Confidentiality

ORDER NO. 25,479

March 26, 2013

I. MOTION FOR CONFIDENTIAL TREATMENT

On March 12, 2013, Resident Power Natural Gas & Electric Solutions LLC (Resident) and PNE Energy Supply LLC (PNE) jointly filed a Motion for Confidential Treatment and for Protective Order (Motion). The Motion seeks protective treatment for documents submitted in response to requests delineated in the Commission's February 28, 2013 Order of Notice initiating Docket Nos. DE 13-059 and DE 13-060.

Resident and PNE submitted documents, tabbed 1 through 11, on March 12, 2013 in response to the Commission's Order of Notice. In the Motion, Resident and PNE argue that the documents pertain to competitive business strategies, descriptions of operations, personal and private information concerning customers, financial information related to operations. The Companies state they have taken steps to prevent the information from public dissemination and disclosure would impair competition and provide "competitors with insight and knowledge about

their operations, customers and business strategies.” They also seek protective treatment over the cover letter to the discovery responses and Motion, which include portions of the Order of Notice itself. The Motion asks that access to redacted materials be limited to the Commission and its Staff. Motion at 4.

Staff objected to the Motion on March 14, 2013, noting that some of the redacted information is already publicly available, and that the redactions are overbroad, going beyond the types of information that should be considered confidential.¹ Staff also argued that the Companies did not detail the harm that would result from disclosure and that if the Motion were granted it is likely that the hearing on the merits would have to be closed to the public, despite public interest in the proceedings.

On March 19, 2013, in response to Staff’s objection, Resident and PNE submitted revised documents that withdrew some of the redactions contained in the March 12, 2013 submission. Staff, on March 22, 2013, supplemented its Objection to reflect the redactions now requested by Resident and PNE. Based on the revised redactions and the revised Staff objection, the position of Staff on the requested protective treatment is as follows:

- Organizational charts for PNE, Resident, et al. (Tab 1) Staff: Deny
as revised redactions still include publicly available information
- Corporate records re: ownership of PNE, Resident (Tab 2) Staff: Deny
as response does not clearly state ownership of PNE and Resident
- PNE Financial balance sheets (Tab 3) Staff: Grant
- Existing projection of PNE’s finances (Tab 4) Staff: Grant
- Projection of PNE’s ISO-NE financial obligations (Tab 5) Staff: Grant
- Plan to cure PNE financial default, restore status (request 6) Staff: Grant
as to dollar amounts only, Deny otherwise
- Communications with ISO-NE re: PNE’s financial security (Tab 7) Staff: Grant
- List of commercial and industrial customers of PNE (Tab 8) Staff: Deny

¹ Staff supplemented its Objection on March 18, 2013 to include an Attachment (Exhibit 1) noted but not included in its March 14 submission.

- as many customers already identified on Resident website
- Dates Resident signed up customers, provided notice (Tab 10) Staff: Grant
- P&S with FairPoint Energy; PNE, Resident notification of transfer and/or termination of contracts with PNE, Resident (Tab 11) Staff: Grant
- as to Section 4 (Consideration), Deny otherwise

According to Staff, the Office of Consumer Advocate (OCA) supports the Staff's objection and asks that Resident and PNE submit unredacted copies of all materials to the OCA in conformance with RSA 363:28, VI.²

II. COMMISSION ANALYSIS

New Hampshire's Right-to-Know Law provides each citizen the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception, for "confidential, commercial, or financial information." RSA 91-A:5, IV. We have had numerous occasions to rule on motions for confidential treatment in the context of confidential, commercial, and financial information regarding utilities and their affiliates. *See e.g., EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,280 (October 25, 2011), *Northern Utilities, Inc.*, Order No. 25,330 (February 6, 2012); *Public Service Co. of New Hampshire*, Order No. 25,332 (February 6, 2012); and *National Grid USA et al.*, Order No. 25,370 (May 30, 2012).

Following the approach used in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) in determining whether the information identified by the movants should be deemed confidential. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know

² At the March 15, 2013 prehearing conference, the OCA noted it had received unredacted copies of all materials.

Law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.* We will analyze each tabbed document or set of documents for which protective treatment is requested in turn.

The Commission finds the following information to constitute commercial or financial information under RSA 91-A:5, IV in which Resident and PNE have a privacy interest:

- Limited Liability Company Operating Agreements for Resident and PNE (Tab 2)
- PNE's financial balance sheets (Tab 3)
- Projection of PNE's finances (Tab 4)
- Projection of PNE's financial obligations with ISO-NE (Tab 5)
- Revised response 6 in the March 12, 2013 letter, explaining how PNE intends to cure its default with ISO-NE;
- Communications with ISO-NE regarding PNE's financial security (Tab 7)
- List of commercial and industrial customers of PNE (Tab 8)
- Revised documents indicating when Resident enrolled customers in aggregation agreements and provided notice to customers (Tab 10)
- Section 4 of the Purchase and Sale Agreement with FairPoint Energy, delineating consideration, but not necessarily the full document (Tab 11).

Disclosure of this information will do little if anything to shed light on the conduct or activities of the Commission or other parts of New Hampshire state or local government. In balancing the interests of the companies in protecting their information with the public's interest in disclosure, we conclude that the information noted above should not be publicly disclosed and we grant the confidential treatment requested.

The revised organizational charts (Tab 1) describe four affiliated entities: Resident, PNE, Freedom Logistics, LLC (Freedom) and Halifax American Energy Company, LLC (Halifax). The companies seek protection over the ownership of each entity as well as some staff personnel.

Puc 2006.01(a)(4) requires CEPS such as PNE and Halifax,³ and Puc 2006.02(a)(3) requires aggregators such as Resident and Freedom, to identify in their application for registration the principal(s) “if the applicant is anything other than an individual.” Puc 2006.01(14)(3) includes within the term “principals” “any of the managers or members” of limited liability companies. PNE, Halifax, Resident and Freedom are all limited liability companies.

Because there is a regulatory requirement of disclosure of the members of a limited liability company, there is no privacy interest in the identity of the members. The request to protect the redacted information under the heading Ownership in the four organizational charts, therefore, is denied.

We agree there is a privacy interest in the identities of personnel who are not principals in Resident, PNE, Freedom and Halifax. This interest is not outweighed by the public’s interest in disclosure. We will grant the protection requested as to those individuals.

We found above that Section 4 of the Purchase and Sale Agreement should be protected. There has been no showing, however, as to why the rest of the document and its attachments contain information warranting protection. There being no clear privacy interest, we look to the interests of the public in disclosure. The purchase and sale, the ISO-NE default, and the requests to transfer customer accounts appear to be deeply intertwined and important to the explanations of actions taken by the parties, Staff and other affected parties. Customers and the public as a whole have an interest in the timing, protections and other details of the Purchase and Sale Agreement. Applying the balancing test of *Lambert*, we find the interests in disclosure outweigh

³ South Jersey Energy Company d/b/a Halifax American Energy Company is a registered CEPS in New Hampshire.

the interests in protection and will deny the request to protect the Purchase and Sale Agreement other than Section 4 regarding consideration.

To the extent that information for which protection is granted herein is released or made public by any movant at a later time, that information would no longer be subject to protective treatment. *See* Puc 203.08(l). Consistent with Puc 203.08(k), the grant of confidential treatment is subject to our on-going authority, on our own motion, on the motion of Staff, or on the motion of any member of the public, to reconsider our determination.

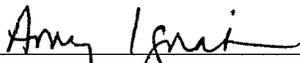
Based upon the foregoing, it is hereby

ORDERED, that the revised request for confidential treatment of the redacted portions of data responses supplied by Resident Power Natural Gas & Electric Solutions, LLC and PNE Energy Supply, LLC is GRANTED as to Tab/requests 2-10; and it is

FURTHER ORDERED, that the revised request for confidential treatment of Tabs 1 and 11 is GRANTED IN PART, as detailed herein; and it is

FURTHER ORDERED, that PNE shall furnish to the Commission's Executive Director newly redacted versions of the Organizational Charts in Tab 1 identifying the ownership of the four affiliated entities, as well as the Purchase and Sale Agreement between PNE, Resident and FairPoint Energy that redacts only Section 4, no later than 9:00 A.M. on March 27, 2013.

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



Amy U. Ignatius
Chairman

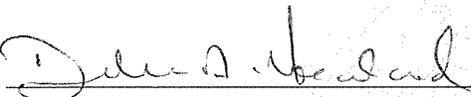


Michael D. Harrington
Commissioner

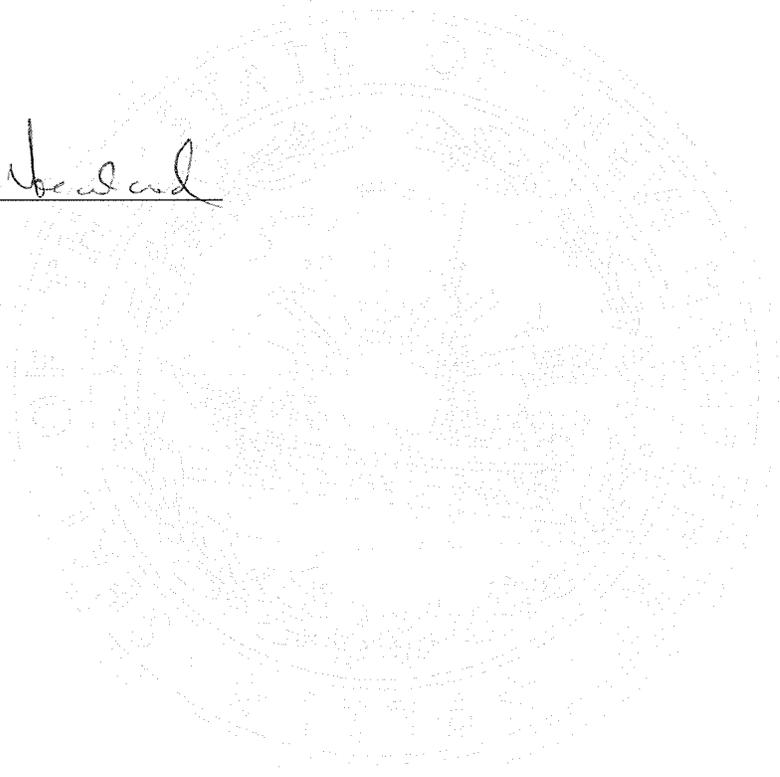


Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director



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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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**