

**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 Proceeding

Order Approving Settlement Agreement

ORDER NO. 25,492

April 15, 2013

APPEARANCES: Hinckley, Allen & Snyder LLP, by Christopher H.M. Carter, Esq. and Daniel M. Deschenes, Esq., on behalf of Resident Power Natural Gas & Electric Solutions LLC and PNE Energy Supply, LLC; Susan W. Chamberlin, Esq. of the Office of Consumer Advocate, on behalf of residential ratepayers; and Alexander F. Speidel, Esq., for the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

On February 27, 2013, Staff submitted a memorandum requesting that the Commission immediately schedule a show cause hearing in connection with recent market events involving Resident Power Natural Gas & Electric Solutions LLC (Resident Power), a registered electric power aggregator headquartered in Manchester, New Hampshire, and its affiliate, PNE Energy Supply, LLC (PNE), a registered competitive electric power supplier (CEPS) headquartered in Auburn, New Hampshire.

On February 28, 2013, the Commission issued an order of notice, finding that a proceeding was warranted for Resident Power and PNE (together, the Companies) to show cause why the Companies should not be subject to sanctions pursuant to N.H. Code Admin. Rules Puc 2005 and the Commission's general supervisory powers. As part of this order of notice, the

Commission ordered the Companies to produce certain categories of information by March 7, 2013, and determined that a combined proceeding for both Docket No. DE 13-059 (Resident Power) and Docket No. DE 13-060 (PNE) would best serve the interests of justice and facilitate efficient resolution of the matters considered within the combined proceeding. The Commission also ordered PNE to cease enrolling new customers during the pendency of this combined proceeding, and suspended any other New Hampshire utilities' obligations to accept or process new customer enrollments from PNE.

On March 11, 2013, the Office of the Consumer Advocate (OCA) filed a letter of participation in this docket on behalf of residential ratepayers pursuant to RSA 363:28. There were no other intervenors.

In March 2013, during the pre-hearing phase of this combined proceeding, Resident Power, PNE, and Staff engaged in discovery, along with a number of procedural motions relating to scheduling, burden of proof, requests for confidentiality, and other matters. Those matters were ruled on by the Commission in a series of decisional documents: (1) March 7, 2013 secretarial letter, communicating the Commission's approval of the Companies' joint request for an extension of time for filing responses to the Commission's order of notice inquiries from March 7 to March 12, 2013; (2) Order No. 25,473 (March 13, 2013), granting Commission approval for the Companies' joint request for a prehearing conference to be scheduled on March 15, 2013; (3) March 18, 2013 secretarial letter, ordering the scheduling of a supplemental prehearing conference on March 19, 2013; (4) Order No. 25,475 (March 20, 2013), ruling that the burden of proof rested with Commission Staff; (5) March 21, 2013 secretarial letter, communicating the Commission's approval in part of Staff's request for an extension of time for

the hearing date, by scheduling the hearing for March 26, 2013; (6) March 25, 2013 secretarial letter, communicating the Commission's approval of Staff's motion, assented to by the Companies and OCA, for a continuance of the hearing date to March 27, 2013; (7) Order No. 25,478 (March 26, 2013), in which the Commission denied Resident Power's motion to dismiss; and (8) Order No. 25,479 (March 26, 2013), in which the Commission addressed the Companies' motion for confidential treatment.

In a separate but related matter, Resident Power submitted a request to renew its status as an electric power aggregator. The matter has been docketed in DM 13-089 and will be addressed subsequently by the Commission. PNE separately filed, on March 20, 2013 in Docket No. DM 11-075, a request for modification of its CEPS registration to incorporate service to commercial and industrial customers, which will also be addressed subsequently by the Commission.

Interested persons may review these decisional documents, and related filings, other than any information for which confidential treatment is requested of or granted by the Commission, on the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2013/13-059.html> or <http://www.puc.nh.gov/Regulatory/Docketbk/2013/13-060.html>.

On March 26, 2013, Staff filed a settlement agreement signed by Resident Power, PNE, and Staff. *See* Hearing Exhibit 4 (Updated Settlement Agreement, filed March 27, 2013, incorporating Commission bench ruling on confidential treatment). *See also* Transcript of March 27, 2013, Public Hearing (Tr.) at 10-27. Staff requested that the Commission accept, pursuant to its waiver authority under N.H. Code Admin. Rules Puc 201.05, the late-filed settlement. The Commission held a hearing on the merits as scheduled on March 27, 2013, and accepted the settlement for its review.

II. TERMS OF THE SETTLEMENT AGREEMENT

The settling parties, Resident Power, PNE, and Staff, recommended that the Commission approve the settlement agreement as a just and reasonable resolution of the matters examined in this combined proceeding. The settlement agreement outlined a series of steps required of the Companies in re-establishing their normal operations, and presented a set of facts to which the Companies and Staff stipulated, outlining, in general terms, the events leading to the suspension of PNE's participation in the New England power market by ISO-New England on February 20, 2013. *See* Hearing Exhibit 4, appendix (Stipulation of Facts).

The settlement agreement incorporated the following provisions:

(1) All former PNE customers placed on default service with PSNH on February 20, 2013, would receive a one-time payment of \$9.50 as a result of being placed on default service. Each customer's acceptance of said \$9.50 payment would be conditioned on the customer waiving any claims against PNE relating to the customer's placement on default service. The \$9.50 payment to each customer would be reduced by any amount owed by the customer to PNE under the PNE terms and conditions prior to February 20, 2013;

(2) PNE would provide instructions to affected customers on receiving the payment described in point (1) above;

(3) Within 3 days of the approval of the settlement agreement, the \$100,000 from the escrow account established by PNE with Sovereign Bank pursuant to N.H. Code Admin. Rules Puc 2003.01(d)(4) and Puc 2003.03, would be delivered by the Commission to counsel for PNE (Hinckley, Allen & Snyder LLP), and would be held by counsel for PNE in a client IOLTA account pending the delivery of all one-time customer payments described in point (1) above.

Counsel for PNE would release the said \$100,000 to PNE after delivery of all said customer payments;

(4) Prior to resuming operations as a CEPS in New Hampshire, PNE would establish an escrow account in the minimum amount of \$200,000 in satisfaction of the requirements set forth in N.H. Code Admin. Rules Puc 2003.01(d)(4) and Puc 2003.03. PNE would be required to increase the amount of the escrow account as required by N.H. Code Admin. Rules Puc 2003.03(a)(2);

(5) Staff recommended that, upon establishment of the escrow account described in point (4) above, the Commission should terminate operation of the provision in the February 28, 2013 order of notice, which directed PNE to cease enrolling new customers pending the outcome of this proceeding, and released New Hampshire utilities from the obligation to accept or process new customer enrollments from PNE;

(6) PNE agreed to develop a notice for former PNE customers, and to provide that notice to the Commission's Consumer Affairs Division for its review. PNE and the Consumer Affairs Division would work cooperatively and in good faith on the content of this notice, which would be provided to the former PNE customers by e-mail, posting on the PUC website, and via a PUC press release, no later than April 12, 2013; and

(7) PNE, Resident Power, and Staff agreed that the settlement agreement serves as a full release of all issues and allegations raised in the February 27, 2013 Staff recommendation, and the February 28, 2013 order of notice.

III. POSITIONS OF THE PARTIES AND STAFF REGARDING THE SETTLEMENT; PUBLIC COMMENT

A. The Companies

PNE and Resident Power requested the Commission's approval of the settlement agreement at hearing, and described the compensation provided to former PNE customers within the terms of the settlement agreement as fair. Tr. at 84-85.

B. Staff

Staff, at hearing, presented the direct testimony of Steven E. Mullen, Assistant Director of the Electric Division, and Amanda O. Noonan, Director of the Consumer Affairs Division. Tr. 40-78. Staff supported the settlement agreement as a means of providing an efficient resolution of the matters involving the Companies, providing a useful framework of stipulated facts, offering speedy and fair compensation to former PNE customers placed on PSNH Default Service, and offering useful regulatory lessons going forward. Tr. at 86-87. Staff also noted that it had the expectation that counsel for PNE would independently verify the delivery of all one-time customer payments in advance of releasing the \$100,000 in escrow funds to PNE. Tr. 74-78.

C. Office of the Consumer Advocate

The OCA did not sign the settlement agreement, and it outlined its concerns at hearing. The OCA viewed the \$9.50 customer compensation amount as lower than its expected per-customer estimate of economic harms resulting from PNE customers being placed on PSNH Default Service, which OCA estimated to be in the range of \$12-15. Tr. at 84. The OCA also expressed its concern that the Companies' customers did not receive the benefit of their bargain as a result of the events of February 2013, and also suffered ancillary harms connected with

customer confusion, and lack of knowledge of the affiliate relationship between Resident Power and PNE. Tr. at 82-85.

D. Public Comment (Public Service Company of New Hampshire)

PSNH, though not a party to this proceeding, submitted a written public comment to the Commission regarding its views on the recent events involving the Companies and outlined its negative position towards the settlement agreement. PSNH's comment identified a series of allegations regarding PSNH's recent business interactions with the Companies, described the \$9.50 in customer compensation as inadequate, and also decried the settlement agreement's exclusion of compensation for PSNH, for its alleged financial losses related to its recent interactions with the Companies.

IV. COMMISSION ANALYSIS

Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default. N.H. Code Admin. Rules Puc 203.20(b) requires that, prior to approving disposition of a case by settlement, the Commission determine that the settlement results are just and reasonable and in the public interest.

We have reviewed the settlement agreement, in light of testimony provided by the parties at hearing, the facts stipulated to by the Companies and Staff, and our own independent analysis of the facts at hand regarding the events involving the Companies. On the basis of this review, we find that this settlement agreement offers a fair level of compensation for former PNE customers, through the verified mechanism of the \$9.50 payment, while offering a way forward for the Companies' re-integration into and provision of service in the New Hampshire

competitive electric power market. In light of recent events, we strongly support the settlement term requiring that PNE provide additional surety, in the minimum amount of \$200,000, on a verifiable basis before re-starting operations. We also strongly support the development of a joint notice to PNE customers, with the collaboration of PNE and the Consumer Affairs Division, to reduce customer confusion and to provide useful guidance to customers going forward; however, we do note, that as a matter of administrative necessity, we must modify *sua sponte* the date by which this notice must be provided, from April 12, 2013, to April 19, 2013.

Regarding the comments made by OCA and PSNH at the hearing, we acknowledge, as Staff acknowledges, that there is much work to be done in enhancing New Hampshire's new regulatory framework for competitive energy suppliers as the competitive retail electricity market continues to develop. That said, customers do bear a burden of due diligence in selecting a competitive supplier, with the understanding that such suppliers are subject to a much lighter regime of regulatory oversight and can, as recent events show, encounter financial difficulty.¹

Having reviewed the record, including the settlement and the evidence presented at hearing, we find that the resolution of this matter through the terms of the settlement agreement is just and reasonable and in the public interest. We find that the terms of the settlement represent an appropriate balancing of the interests of the Companies' customers and the Companies, and are consistent with the public interest. We will adopt and approve the terms of the settlement agreement, with the understanding that the public notice to be jointly prepared by PNE and the Consumer Affairs Division shall be issued no later than April 19, 2013. We await

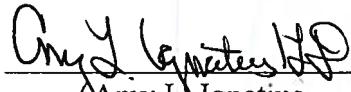
¹ RSA 374-F:3,II "Customer Choice. Allowing customers to choose among electricity suppliers will help ensure fully competitive and innovative markets. Customers should be able to choose among options such as levels of service reliability real time pricing, and generation sources, including interconnected self generation. Customers should expect to be responsible for the consequences of their choices...."

the establishment of the \$200,000 escrow account, as verified by Staff, in anticipation of the lifting of the suspension of PNE's business outreach activities. We note that our approval of this settlement agreement does not limit our disposition of similar matters in the future.

Based upon the foregoing, it is hereby

ORDERED, that the terms of the settlement agreement presented by the parties are hereby adopted and approved as discussed herein.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of April, 2013.



Amy L. Ignatius
Chairman

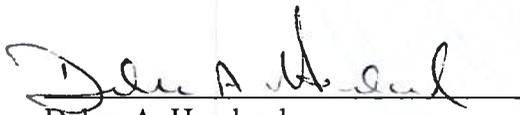


Michael D. Harrington
Commissioner



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.

Executive.Director@puc.nh.gov
al-azad.m.iqbal@puc.nh.gov
alexander.speidel@puc.nh.gov
amanda.noonan@puc.nh.gov
bart.fromuth@residentpower.com
ccarter@haslaw.com
Christina.Martin@oca.nh.gov
david.shulock@puc.nh.gov
ddeschenes@haslaw.com
f.anne.ross@puc.nh.gov
howard.plante@powernewengland.com
Rorie.E.P.Hollenberg@oca.nh.gov
Stephen.R.Eckberg@oca.nh.gov
steve.mullen@puc.nh.gov
susan.chamberlin@oca.nh.gov
suzanne.amidon@puc.nh.gov
tom.frantz@puc.nh.gov

Docket #: 13-059-1 Printed: April 15, 2013

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.