

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DE 13-059

RESIDENT POWER NATURAL GAS & ELECTRIC SOLUTIONS, LLC

Investigation and Show Cause Hearing on Penalties and Suspension or Revocation of  
Aggregator Registration

Order Denying Resident's Motion to Dismiss

ORDER NO. 25,478

March 26, 2013

**I. MOTION TO DISMISS AND RESPONSES**

On March 21, 2013, Resident Power Natural Gas & Electric Solutions, LLC (Resident) filed a Motion to Dismiss Alleged Violations Against Resident Power (Motion). The Motion asserts that the Commission Staff memorandum of February 27, 2013 fails to state a valid claim for relief "because the Commission does not have the authority to impose sanctions on aggregators. The Commission's February 28, 2013 Order of Notice initiated Docket No. DE 13-059."<sup>1</sup>

Resident argues that the Commission's "general supervisory powers" over public utilities under RSA 374:3 do not extend to Resident because aggregators such as Resident have been explicitly excluded from the definition of public utilities. *See* RSA 374-F:7. Further, the Commission's Puc Chapter 2005, cited by the Staff in its memorandum, allows for sanctions, but only towards competitive electric suppliers. Resident also argues that the aggregator rules do not include provisions for sanctions for violations of Commission rules in any event. Resident points out that the Commission cannot impose sanctions or fines on aggregators without first

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<sup>1</sup> Though Resident filed the Motion in both DE 13-059 and DE 13-060, the requested relief is limited to DE 13-059 and makes no representations regarding PNE Energy Supply, LLC (PNE) which is the subject of DE 13-060.

having developed administrative rules to do so as required by RSA 374-F:7, V, and that, therefore, the claims against Resident under Resident under Puc 2005 should be dismissed.

Staff, on March 22, 2013, submitted a letter urging the Commission to deny the Motion. According to Staff, the docket has an investigative component and the Commission has authority to “make findings regarding violations of Commission rules, irrespective of whether it has authority to issue sanctions for such violations.”

## **II. COMMISSION ANALYSIS**

Our administrative rules Chapter 2000, address both aggregators and competitive electric power suppliers (CEPS). Aggregators are not public utilities and do not “take ownership of the electricity” being delivered, but instead aggregate electric load on behalf of a CEPS, an individual, or a group of customers. *See* Puc 2002.02. CEPS sell or offer to sell electricity to retail customers. *See* Puc 2002.05. Resident is an aggregator, PNE is a CEPS. Puc Chapter 2000 governs 1) registration of CEPS (Puc 2003.01) and filing of notice of intention to provide aggregation services (Puc 2003.04); 2) renewal of CEPS registration (Puc 2003.02) and renewal of aggregator notice (Puc 2003.05); 3) customer protections required of CEPS (Puc 2004.02 through 2004.07, 2004.09 and 2004.10) and aggregators (Puc 2004.08 through 2004.10); and 4) investigation into allegations that the CEPS or aggregator is not in compliance with the provisions of Puc 2000 (Puc 2005.02). Puc 2005.01 which authorizes fines, suspension and revocation of registration, however, extends to CEPS alone. Resident concludes, therefore, that because there are no provisions for sanctions against an aggregator such as Resident, the alleged claims against it must be dismissed.

Staff concedes that the rules provisions on sanctions apply only to CEPS, but argues that the docket also involves an investigation into Resident's conduct, as authorized by Puc 2005.02. As such, according to Staff, the docket should not be dismissed.

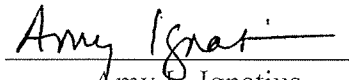
It is not clear why the Commission's administrative rules detail notice, customer protection and investigation into allegations of misconduct by aggregators and yet do not include sanctions for wrongdoing. Whether intentional or inadvertent, however, the Commission in this instance does not have authority in its rules to impose sanctions on aggregators.


We do not agree with Resident that because sanctions are not authorized that the docket must be dismissed. As Staff noted, the investigatory provisions of Puc 2005.02 clearly apply to aggregators. The allegations raised by Staff in its February 27, 2013 memorandum are significant and the Commission would be derelict in its duty to protect consumers, if it did not pursue the allegations. The Motion, therefore, is denied. If, after hearing, the Commission were to find that Resident in its role as an aggregator had violated applicable administrative rules, it would seek assurance of corrective action, but would not impose sanctions.

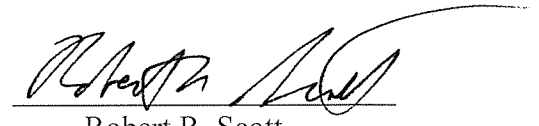
**Based upon the foregoing, it is hereby**

**ORDERED**, that the Motion to Dismiss Alleged Violations Against Resident Power filed by Resident Power Natural Gas & Electric Solutions, LLC is DENIED.

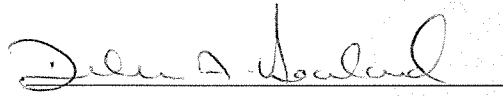
By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of  
March, 2013.

  
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Amy L. Ignatius  
Chairman

  
\_\_\_\_\_  
Michael D. Harrington  
Commissioner

  
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Robert R. Scott  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director

**SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED**

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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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