

**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 Burden of Proof

ORDER NO. 25,475

March 20, 2013

On March 8, 2013, Resident Power Natural Gas& Electric Solutions LLC (Resident) and PNE Energy Supply LLC (PNE) jointly filed a Motion for Ruling Burden of Proof (Motion) in regards to the hearing now scheduled for March 22 and 27, 2013 in Dockets No. DE 13-059 and DE 13-060. By secretarial letter issued March 15, 2013, the Commission allowed until March 19, 2013 for filings in response to the Motion.

According to Resident and PNE, the Staff should bear the burden of proving the rule violations alleged in its February 27, 2013 Recommendation memo. Resident and PNE assert that such a determination is required to protect its due process rights and is consistent with state and federal law and the Commission's administrative rule Puc 203.25 ("... the party seeking relief through a petition, application, motion or complaint shall bear the burden of proving the truth of any factual proposition by a preponderance of the evidence"). Motion at 2. The companies further assert that a contrary determination in a Commission proceeding, *Wilton*

Telephone Company, Order No. 23,744, 86 NHPUC 498 (July 26, 2001) was based on a line of cases that has since been reversed by the United States Supreme Court. Motion at 4.


According to the Motion, Staff indicated that Resident and PNE “bear the burden of proving they have not committed the alleged violations.” The Motion did not represent any position taken by the Office of Consumer Advocate (OCA) and the Commission has not received responses from the Staff or the OCA to the motion.

The Commission has considered the arguments presented in the Motion as well as the Commission’s procedural rules and relevant state and federal law. Based on that review, the Commission finds that the burden of proof in these dockets rests with the Staff as the moving party to demonstrate by a preponderance of the evidence that Resident and PNE have violated the Commission rules cited in the Staff Recommendation memo.

Based upon the foregoing, it is hereby

ORDERED, that the burden of proof in the hearing scheduled for March 22, 2013 shall rest with the Commission Staff.

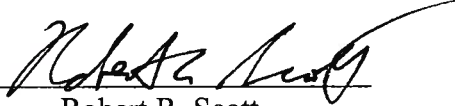
By order of the Public Utilities Commission of New Hampshire this twentieth day of March, 2013.



Amy L. Ignatius
Chairman

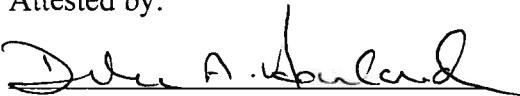


Michael D. Harrington
Commissioner



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.

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Docket #: 13-060-1 Printed: March 21, 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.