

ALJ/MAB/gab

Mailed
FEB 2 0 1998

Decision 98-02-114 February 19, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations and practices of Boston-Finney, registered Non-utility Electric Services Provider No. 1105, and those of the managing directors or trustees, Christopher S. Mee and Richard MacFarlane, and whether these respondents have violated provisions of the Public Utilities Code, including section 394.25, or Commission orders.

ORIGINAL

1.98-02-004
(Filed February 4, 1998)

INTERIM OPINION

Background

On February 3, 1998, the Commission's Executive Director sent a letter to Boston Finney¹ notifying it that, pursuant to Public Utilities (PU) Code § 394.25, the Executive Director had found "evidence to support a finding that the entity has committed an act constituting grounds for suspension or revocation of registration" as a Non-utility Electric Service Provider. The Executive Director set the hearing required by the statute for February 13, 1998.

On February 4, 1998, the Commission opened an investigation into whether Boston-Finney had violated PU Code § 394.25 or Commission orders, Boston-Finney, 1.98-02-004. The Commission set a hearing for February 13, 1998, to offer Staff and Boston-Finney the opportunity to present evidence on the allegations. In the Order Instituting Investigation (OII), the Commission stated that the proceeding was preliminarily categorized as adjudicatory for purposes of Article 2.5 of the

¹ Boston-Finney is registered Non-utility Electric Service Provider No. 1105. The letter was addressed to its managing trustee, Christopher S. Mee.

Commission's Rules of Practice and Procedure and would be set for an evidentiary hearing.

On February 10, 1998, the assigned Administrative Law Judge (ALJ), in consultation with the assigned Commissioner, issued a ruling clarifying the applicability of the procedures mandated by Senate Bill 960, as stated in Article 2.5 of the Commission's Rules of Practice and Procedure. The ruling first noted that the two procedural tracks, the § 394.25 process and the OII, are separate and distinct Commission actions. The statutory process has an expedited time frame, while the OII does not. While the OII process can accommodate the procedures stated in Article 2.5, the ruling concluded that the § 394.25 process appeared to foreclose application of Article 2.5 to the § 394.25 process, with one exception. That exception was the ex parte rules. Because the ex parte rules can be applied in an expedited timeframe, Rule 7(b) will apply to the § 394.25 proceeding. That rule prohibits all ex parte contacts. The ruling further stated that the OII would be conducted in full conformity with the Article 2.5 rules.

On February 13, 1998, assigned Commissioner Neeper and assigned ALJ Bushey conducted the hearing required by § 394.25. At the hearing, the respondents² requested that the hearing be continued to allow them sufficient time to prepare. Pending the continued hearing, the respondents offered to impose substantial restrictions on their operations. The Consumer Services Division did not oppose the request. In a joint ruling, Commissioner Neeper and ALJ Bushey continued the hearing to February 25-26 on the condition that Boston-Finney comply with the restrictions as stated; they also indicated that they would bring this matter before the Commission at the Commission's next meeting.

² At the hearing, Trustee Christopher S. Mee, both individually and as trustee, and the Boston-Finney trust were represented by counsel. Trustee Richard MacFarlane appeared in his capacity as trustee and was not represented by counsel.

The purpose of this interim decision is to confirm the assigned Commissioner's and ALJ's ruling.

Discussion

In the OII, we ordered the respondents to appear and show cause why we should not issue an interim order directing them and their agents to cease and desist:

1. Recruiting or soliciting California residents to become account executives, independent distributors, or any other marketing agents of Boston-Finney;
2. Recruiting or soliciting California residents to become electric retail customers by executing "letters of agreement" or entering into any other arrangements with Boston-Finney for the procurement of electric power;
3. Submitting Direct Access Service Requests to utility distribution companies on behalf of any California electric retail customer; and
4. Processing enrollment fees, deposits, or any other payments from potential marketers or electric retail customers in California.

Boston Finney, I.98-02-004, mimeo. at page 4.

We considered these "cease and desist" directives to be the most likely result of a hearing in which the Staff proved its allegations. These directives would fully protect both potential California marketing agents as well as California retail electricity consumers by effectively banning Boston-Finney from this market. Should Staff prove its allegations that Boston-Finney has made material misrepresentations to consumers, has operated through dishonesty, fraud or deceit and has not obtained sufficient financial or operational capabilities to offer service, we continue to see these limitations as the minimum sanctions we will impose.

In support of its request for a continuance, Boston-Finney offered to implement these actions immediately pending the rescheduled hearing. Based on the ruling at the hearing, Boston-Finney has already implemented these "cease and desist" actions and therefore has effectively ceased to do business in California pending the hearing. At the

upcoming hearing, we expect Boston Finney will present evidence in support of its position that these limitations are unwarranted.

In the interim, however, these limitations fully protect California consumers and potential marketing agents, while allowing Boston-Finney its full due process rights at the upcoming hearing. We hereby confirm Commission Neeper's and ALJ Bushey's ruling.

We are absolutely committed to mandating the highest standards of consumer protection as we oversee the restructuring of California electric markets. As consumers and providers, and the Commission, embark on this voyage through the uncharted waters of a restructured market, we fully intend to exercise our jurisdiction to its limits to ensure that California consumers and potential marketing agents are not harmed by unscrupulous providers. The benefits of competition which we hope to realize from these changes to the market can only be captured where consumers have accurate information and all competing firms adhere to the same standards of a fair marketplace.

To this end, all electric service providers should be on notice that the Commission views the authority delegated by the Legislature to the Executive Director in PU Code § 394.25 to include the authority to immediately suspend or revoke a provider's registration by letter pending an expedited hearing as specified in that statute. We instruct the Executive Director to use this authority as deemed appropriate, where the required finding can be made, to further our goals of consumer protection and creating a fair market.

Findings of Fact

1. The Commission scheduled the hearing required by PU Code § 394.25 for Boston-Finney on February 13, 1998.
2. Boston-Finney requested that the hearing be rescheduled for a later date.
3. In support of its request, Boston-Finney offered to voluntarily implement the "cease and desist" directives restated above from the Commission's OII.
4. The assigned Commissioner and assigned ALJ granted the request pending Commission consideration.

Conclusions of Law

1. The public interest requires that Boston-Finney implement the "cease and desist" directives pending a rescheduled hearing.
2. PU Code § 394.25 authorizes the Commission's Executive Director to immediately suspend or revoke an energy service provider's registration upon making the required finding and setting the specified expedited hearing.

INTERIM ORDER

Therefore, IT IS ORDERED that:

1. Commissioner Neeper's and ALJ Bushey's February 13, 1998 ruling granting Boston-Finney's request to reschedule the hearing required by PU Code § 394.25 is confirmed and setting the specified expedited hearing.
2. Pending the hearings, Boston-Finney shall cease and desist from:
 - a. Recruiting or soliciting California residents to become account executives, independent distributors, or any other marketing agents of Boston-Finney;
 - b. Recruiting or soliciting California residents to become electric retail customers by executing "letters of agreement" or entering into any other arrangements with Boston-Finney for the procurement of electric power;
 - c. Submitting Direct Access Service Requests to utility distribution companies on behalf of any California electric retail customer;

1.98-02-004 ALJ/MAB/gab

- d. Processing enrollment fees, deposits, or any other payments from potential marketers or electric retail customers in California.

This order is effective today.

Dated February 19, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners