

MAR 16 1998

Decision 98-03-035 March 12, 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.

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

**ORIGINAL**

**INTERIM OPINION**

**Background**

On February 3, 1998, the Commission's Executive Director sent a letter to Boston Finney<sup>1</sup> 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

---

<sup>1</sup> 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 13, 1998, assigned Commissioner Neeper and assigned Administrative Law Judge (ALJ) Bushey conducted the hearing required by § 394.25. At the hearing, the respondents' 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. The Commission confirmed the Assigned Commissioner's and ALJ's ruling at its February 19, 1998, meeting in Decision 98-02-114. Pending the hearings, the Commission ordered Boston-Finney to 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;
- d. Processing enrollment fees, deposits, or any other payments from potential marketers or electric retail customers in California.

---

<sup>2</sup> 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.

At the February 25, 1998, hearing Boston Finney announced that it was abandoning its Energy Service Provider registration. Based on that announcement, Commissioners Conlon and Neeper, determined that Boston's Finney's registration shall be revoked.

This interim decision confirms the Commissioners' determination of revocation pursuant to PU Code § 310.

#### **Discussion**

Boston Finney has announced that it will no longer operate as an Energy Service Provider in the state of California. Therefore, Boston Finney is operationally incapable of providing electric service in violation of PU Code § 394.25(b)(3). Accordingly, we confirm the assigned Commissioners' ruling revoking Boston Finney's registration subject to the conditions listed below.

The revocation has no effect on the on-going investigation of Boston Finney's operations in the OII docket. That docket remains open for consideration of fines and other sanctions for Boston Finney's conduct while it was a registered Electric Service Provider.

#### **Finding of Fact**

Boston Finney has abandoned its operations as an Electric Service Provider.

#### **Conclusions of Law**

1. Boston Finney is in violation of PU Code § 394.25(b)(3).
2. Boston Finney's registration as an Electric Service Provider should be revoked.

#### **INTERIM ORDER**

Therefore, **IT IS ORDERED** that:

1. Commissioners Neeper's and Conlon's February 25, 1998, ruling revoking Boston-Finney's registration as an Electric Service Provider, No. 1105, is hereby confirmed by the full Commission subject to the conditions set out below.

2. Boston-Finney shall be subject to the following conditions:
  - a. No later than Monday, March 2, 1998, Counsel for Boston Finney must submit documentation showing that Boston Finney has notified all its sales agents and potential customers that it is no longer authorized to provide or solicit orders to provide electric service in California.
  - b. Boston Finney, either a trust or Nevada corporation, Christopher Mee or Richard MacFarlane, personally or as trustee or officer, successors and assigns of any other above entities must clearly state any involvement in any entity which seeks registration or re-application for registration as an Electric Service Provider. This proceeding, although terminated without any specific findings, must be reported under question 13 of the registration form for any future registrations and in any applications submitted pursuant to Public Utilities Code Section 394(d).
  - c. The Commission finds that Boston Finney does not meet the standards for re-application set out in Public Utilities Code Section 394(d) such that any applications submitted pursuant to that section must show changed circumstances which bring Boston Finney into compliance with those standards.
  - d. The evidence gathered to date by the Commission's Consumer Services Division shall be compiled and filed and served on all parties no later than March 6, 1998. This evidence will be accepted into the formal record of the proceeding solely for the purpose of preserving the evidence for use in later phases of this proceeding or other proceedings.
  - e. All utility distribution companies are directed to accept no direct access service requests, regardless of the size of the customer, from Boston Finney. Any customer whose request has been processed should be notified and switched to the default service provider pending receipt by the utility of a valid direct access service request.
  - f. All utility distribution companies are also directed to cancel their Utility Distribution Company-Electric Service Provider Service Agreements, as defined in Decision 97-10-087, with Boston Finney effective today. Any charges due to the utility under the contract remain due and payable notwithstanding this cancellation directive. The utility distribution companies shall enter no new service agreements with Boston Finney or any entity in which its principles or successors are associated without further order of the Commission.

g. All utility distribution companies are further directed to delete Boston Finney from their lists of Energy Service Providers.

3. This decision shall be served on all utility distribution companies.

This order is effective today.

Dated March 12, 1998, at San Francisco, California.

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