

Decision 98-08-011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the operations and practices of affiliated companies FutureNet, Inc. and FutureNet Online, Inc., dba Future Electric Networks, and individuals in control of operations: Alan Setlin and Larry Huff, Respondents.

I.98-04-033
(Filed April 23, 1998)

Goodin, MacBride, Squeri, Schlotz & Ritchie, by Thomas J. MacBride, Jr., Attorney at Law, and Kathryn A. Fugere; and Chadbourne & Parke, LLP, by Harvey I. Saferstein, Attorney at Law, and Christopher La Quay, for FutureNet, Inc. and Alan Setlin, respondents.
Maria Oropeza, Attorney at Law, for Consumer Services Division.

INTERIM OPINION

Summary

This order approves the settlement agreement between Commission's Consumer Services Division (CSD) and Future Net, Inc., Future Net Online, Inc., dba Future Electric Networks, and Alan Setlin (Future Net). The settlement agreement imposes significant interim limitations on Future Net's operations while this proceeding is pending.

Procedural Background

On April 23, 1998, the Commission issued its Order Instituting Investigation (OII), I.98-04-033, into the operations of Future Net, Inc., and Future Net Online, Inc., dba Future Electric Network and Alan Setlin and Larry Huff. The OII also set a hearing at which all respondents were ordered to appear and

show cause why they should not be ordered to cease and desist from all conduct which entails marketing or soliciting customers to receive electric service until they are lawfully registered. That hearing was subsequently set for June 16, 1998.¹

On June 16, 1998, the parties appeared and offered witnesses on issues related to the show cause hearing. At the conclusion of hearings for the day and with the encouragement of the assigned Commissioner and ALJ, the parties agreed to meet and endeavor to resolve the interim limitation issues by mutual agreement. On June 17, 1998, the parties appeared for the second scheduled day of hearings and reported that they had reached an agreement in principle and that a written agreement would be forthcoming. Counsel for CSD presented an oral motion for an order of the Commission approving the agreement. Such an agreement was filed on June 22, 1998.

Description of the Settlement Agreement

The major provisions of the settlement agreement are:

1. **Advertising Prohibition - Future Net will not disseminate marketing materials mentioning its name, whether on its own behalf or on behalf of a registered electric service provider (ESP).**
2. **Registered ESP Approval - Any marketing material Future Net distributes for a registered ESP must be approved in writing by that ESP.**
3. **Confirmation of Past Customer Changes to Eastern Pacific - Future Net will send postcards to all customers that have previously submitted letters of agency to Eastern Pacific confirming the customers' intention to switch to Eastern Pacific.**

¹ At this hearing, which occurred prior to a prehearing conference and prior to issuance of a scoping memo, the assigned Commissioner designated Administrative Law Judge (ALJ) Bushey as the presiding officer for purposes of this proceeding (Tr. 4:24-28).

Any customer who does not return the post card within 10 days, marked in the affirmative, shall not be switched.

4. CSD Approval of ESP Contracts - All marketing contracts with ESPs shall contain a statement that the ESP will be responsible for Future Net's conduct as a sales agent and CSD must approve all such contracts.

Discussion

The Commission's Rule of Practice and Procedure 51(e) requires that to be approved by the Commission settlement agreements be (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest.

a. Reasonable in Light of the Whole Record

The record in this case reveals allegations of widespread violations of Public Utilities Code Section 394(a). Such violations, if proven, harm not only the customers' right to know which ESP is soliciting them but also damages the competitive market energy service providers through unfair competition.

This agreement resolves the interim prohibitions issues in an efficient and expeditious manner by severely limiting Future Net's ability to use its own name in advertising for electric services. Future Net retains the ability to provide marketing services for registered energy service providers but only using the provider's name.

The central issues of the proceeding remain outstanding and will be addressed by the parties in the hearings on the merits.

b. Consistent with the Law

None of the actions required by the settlement agreement, as amended, are in violation of any statute or Commission rule or regulation.

c. In the Public Interest

The Commission is responsible for ensuring that the public is protected from unscrupulous practices by energy service providers, whether registered or not. The settlement agreement protects the public by imposing significant limitations on Future Net's advertising such that consumers will not be misled about what entity will be providing the electrical service. In this way, consumers will be protected from any further harm while the Commission processes this matter in an orderly fashion.

For these reasons, the Commission finds that the settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The agreement is approved pursuant to Rules 51 through 51.10 of the Commission's Rules of Practice and Procedure. (See also San Diego Gas & Electric (1992) 46 CPUC2d 538 (rules for all-party settlements).)

Findings of Fact

1. The Commission opened an investigation into Future Net's operations based on allegations that Future Net was offering electrical service to the public without having registered as an energy service provider with the Commission.
2. The parties reached a settlement agreement of interim prohibitions which is Attachment A to this decision.
3. The settlement agreement resolves only the interim prohibitions issues.

Conclusions of Law

1. The settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.
2. The settlement agreement should be approved.
3. In order to assure prompt compliance with the terms of the settlement agreement, and to quickly obtain the benefits of the settlement agreement for California consumers, this order should be made effective immediately.

INTERIM ORDER

Therefore, **IT IS ORDERED** that the settlement agreement affixed hereto as Attachment A and made a part hereof is approved, and the parties are directed to comply with the terms set forth in the settlement agreement.

This order is effective today.

Dated August 6, 1998, at San Francisco, California.

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**STIPULATED CEASE AND DESIST ORDER
UNTIL FURTHER ORDER BY THE COMMISSION**

I. INTRODUCTION

Without either party conceding or admitting any legal or factual issues and in order to avoid further hearings and expenses, it is hereby stipulated that this cease and desist order is entered into by the respondents during the pendency of the above entitled proceedings, to resolve the issues in the OSC hearing.

II. TERMS AND CONDITIONS

Future Net Inc., Future Net Online Inc., dba Future Electric Networks collectively referred to as FEN agrees as follows:

1. There will be no mention of Future Electric Networks, in marketing materials designed for the sale of electricity in California, disseminated to the general public or personally delivered to the customer, and FEN

in marketing electric service to the public on behalf of a registered ESP will not mention any electric utility or ESP, doing business in California which is required to be certificated or registered, but is not registered or certificated. Marketing Materials include oral presentations, internet website and printed materials.

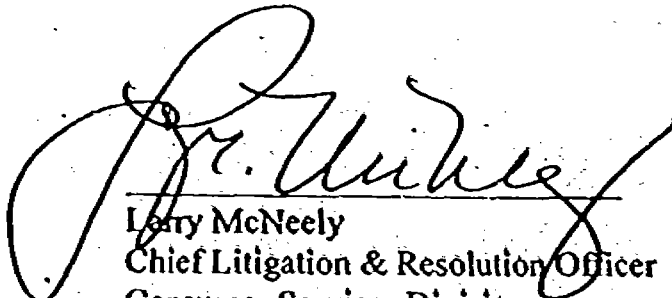
2. FEN must obtain written approval of the licensed Electric Service Provider for all marketing materials, inclusive of websites, printed materials, and scripts, designed for the sale of electricity.
3. FEN will send postcards to all Electric consumers who have submitted Letters of Agency prior to June 16, 1998 to FEN. These postcards are, to verify if these individuals in fact would like to change their electric service provider to Eastern Pacific Energy. If the consumers do not return the post cards with an affirmative answer, or if the post cards are not returned within fourteen days, FEN agrees to drop the individual as an Eastern consumer. The content of the post cards shall be approved by the Consumer Services Division.
4. FEN will not hold itself out to be an Electric Service Provider ("ESP") without first registering with the Commission and complying with the PUC and obeying the law.
5. FEN agrees that any contract with an ESP pursuant to which FEN is to provide Electric Marketing Services to the ESP will contain language that the ESP will be held accountable for Future Electric Networks' conduct as a sales agent (the existing FEN-Eastern Pacific contract, for purpose of this order, is not effective). To ensure compliance, FEN shall submit any such contract to CSD before commencing marketing of that ESP's electrical service.
6. Future Electric Networks agrees that the following individuals will not be directors or officers of either Future Net Online Inc., Future Net Inc.,

and Future Electric Networks: Mr. Larry Huff, Mr. Robert Depew, and Mr. David Soto.¹

7. By complying with this interim order, FEN shall not be deemed an ESP.

Alan Setlin, CEO
Future Net Inc.
Future Net Online, Inc. dba
Future Electric Networks

Date



Larry McNeely
Chief Litigation & Resolution Officer
Consumer Services Division


6/22/98
Date

¹ Mr. Soto's involvement with Future Net Online, Inc., will be limited to the international operations.

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and Future Electric Networks: Mr. Larry Huff, Mr. Robert Depew, and
Mr. David Soto.

7. By complying with this interim order, FEN shall not be deemed an ISP.



Alan Sotia, CEO
Future Net Inc.
Future Net Online, Inc. dba
Future Electric Networks

6-22-98
Date

Larry McNulty
Chief Litigation & Resolution Officer
Consumer Services Division

Date

1 Mr. Soto's involvement with Future Net Online, Inc., will be limited to the international operations.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document entitled **STIPULATED CEASE AND DESIST ORDER UNTIL FURTHER ORDER BY THE COMMISSION** upon all known parties of record in this proceeding by mailing by first-class mail a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 22nd day of June, 1998.

/s/ NELLY SARMIENTO

NELLY SARMIENTO

(END OF ATTACHMENT A)