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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 Future Net Inc., and Future Net Online, Inc., dba Future Electric Network, and individuals in control of operations: Alan Setlin and Larry Huff,

Respondents.

FILED
PUBLIC UTILITIES COMMISSION
APRIL 23, 1998
SAN FRANCISCO OFFICE
1.98-04-033

ORDER INSTITUTING INVESTIGATION AND
ORDER TO SHOW CAUSE

The California Public Utilities Commission (Commission) regulates Non-utility Electric Service Providers (ESPs) pursuant to the California Constitution Article XII, Public Utilities Code § 365.6 , et. seq., and § 394 et. seq.

The investigative and enforcement staff of the Consumer Services Division (staff) advises through its declaration supporting, the institution of this order to show cause proceeding, that it initiated an investigation into the operations and practices of Future Electric Network, a business activity conducted by Future Net Online, Inc., and Future Net Inc. Future Electric Network and Future Net Online Inc. are located at 28460 Avenue Stanford, Valencia, CA 91355. The parent company, Future Net Online, Inc. is a California Corporation. Future Net Inc. is a Nevada Corporation. The two companies have the same founders, and

Alan Setlin is the CEO for Future Electric Network and in August, 1997 became the CEO for Future Net Online Inc.

Staff began to receive inquiries from consumers who were solicited by FEN representatives, as to whether FEN was a licensed ESP. Staff conducted an investigation which it says brought to light the following facts: (1) FEN's brochures offer the general public the opportunity to become end-user customers, and the option to also become power representatives for the sum of ninety-nine dollars (\$99.00), or executive directors for one-thousand dollars (\$1000.00); (2) FEN states in these materials that the individual is compensated based on where the individual is in the multi tiered "matrix." The power representative is also paid a monthly residual income from the electric usage savings of each customer signed up by that power representative. Executive directors are compensated along the same lines, except that they receive a matching bonus for each executive director they sign up; (3) FEN represents itself in literature are on web sites as a registered ESP. (4) FEN states that it can offer the public the lowest electricity rates; (5) FEN states that they bring years of successful industry experience and reliability to their customers.

CSD states that the material that FEN deploys as its recruiting materials is false and misleading to the average consumer, principally because individuals who were solicited by FEN representatives were under the impression that FEN was a registered ESP.

CSD informs us that FEN, a subdivision of Future Net Online, Inc. and affiliated and controlled by a parent company, Future Net, Inc., is marketing itself as a registered ESP, but FEN is not registered with the Commission. If the allegations are proven, FEN and the entities and individuals directing it are in violation of Public Utilities Code § 394 (a), requiring that any entity which offers electric services first be registered with the Commission.

FEN'S ALLEGED FAILURE TO REGISTER AS AN ESP

As of early 1998, FEN has allegedly been operating as an ESP and holding out ESP service without proper registration with the Commission. Staff believes that FEN was operating as such prior to the investigation which began in early February, 1998. Representatives from FEN have met with staff and expressed, according to staff, that FEN has no intention to register as an ESP, because it does not itself possess the capabilities to deliver electric service to consumers.

USE OF ANOTHER'S ESP NUMBER

Staff alleges that FEN is using Eastern Pacific Energy's ESP number in all of its advertisements, which is inclusive of printed materials, and internet materials. Eastern Pacific is a registered ESP with the ESP Number of 1029. Eastern Pacific Energy contracted with Pacific Advantage, to coordinate its advertising. Pacific Advantage then entered a contract with FEN, to have FEN market and coordinate the residential sales of electricity for Eastern Pacific Energy. Staff asserts according to evidence staff has gathered, FEN virtually never mentions in its materials that the actual energy provider will be Eastern Pacific Energy, and that usually any mention of Eastern Pacific Energy is made with the company's initials. Staff alleges that the potential consumer has no idea what EPE stands for and could logically come to the conclusion that they have signed up with FEN as the entity to ultimately provide ESP services.

A data request was sent by staff to Eastern Pacific Energy and Pacific Advantage, asking about its association with FEN. CSD sought to determine if EPE was allowing FEN to use its number, or whether FEN was using EPE's number without its knowledge. Eastern Pacific Energy's response to CSD's data request included contracts that indicated the relationship of the parties, and which parties were involved in the marketing and distribution for residential use of electricity. At the same time, CSD sent FEN a cease and desist letter, informing

the FEN representatives, that they had to be a licensed provider in order to disseminate the materials and solicitation offers which it was, and marketing themselves as an ESP. Staff believes that a factor which could motivate the respondents to not seek ESP registration is the past criminal activity of the principals.

Staff informs us that public records show that Setlin has a criminal background from Nevada stemming from a conviction for Conspiracy to Obtaining Money by False Pretenses dated June of 1990. Setlin was originally charged with both a felony and a gross misdemeanor under Nevada Penal Code §§ 205.380 and 199.480 conspiracy to obtain money by false pretenses. The facts surrounding the aforementioned conviction are as follows; Setlin doing business as National Consumers Marketing, Inc. convinced customers over the telephone to purchase a water treatment device for \$398.00 on the grounds that they would then be eligible for one of the four prizes. Those prizes included, a new Ford Escort, a Sony big screen television set, a cashier's check, or a complete home entertainment center, which would be randomly selected by a computer. According to court documents from Washoe county, the customers were never eligible for three of the four prizes. The prizes that the customers were eligible for had been previously determined by customer contact.

Setlin subsequently entered into a plea bargain with the District Attorney's Office of Washoe County. The plea bargain agreement allowed Setlin to enter an Alford plea to the gross misdemeanor count, and pay restitution to the victims in the amount of \$7,000.00. (Staff advises us that an Alford plea has the following common characteristics: (1) the defendant pleads guilty despite protesting his innocence; (2) the plea is seen as an intelligent choice by the defendant; (3) the plea cannot be withdrawn when there is evidence of guilt; and

(4) admission of guilt is not a constitutional prerequisite. North Carolina v. Alford, (1970) 400 U.S. 25, 37

Robert Depew is listed as the Chief Executive Officer for Future Net Online Inc. incorporation papers on file with the State of California. Depew has a criminal background stemming from a California conviction for a violation of Penal Code §327 Endless Chain Schemes, and Business and Professions Code § 17500 False or Misleading Statements dating back to July of 1973. People v. Bestline Products, Inc. The judgment in Bestline limits Depew's involvement in multi-level marketing programs. Depew is enjoined from engaging in any multi-level marketing where false statements or misleading representations concerning the amount of earnings which could be made through marketing programs, from making false or misleading representations concerning the facility of recruiting new distributors, and from making false or misleading representations concerning the facility of selling products to the consuming public. People v. Bestline Products Inc. Judgement dated July 25, 1973, No. C 2842 page 5 lines 8-16.

FEDERAL TRADE COMMISSION INVESTIGATION

In late February of 1998, The Federal Trade Commission began its own investigation into Future Net Online, Future Net Inc., and Future Electric Network. During the course of its investigation the FTC discovered what they believe to be an illegal compensation plan commonly referred to as a pyramid scheme. The FTC sought and obtained in federal court a temporary restraining order (TRO) on both the parent company and subdivision. The TRO forbids FEN and Future Net Online from soliciting any new distributors. The TRO also placed FEN and Future Net Online in a receivership. On March 9, 1998 that TRO was modified and FEN was taken out of receivership and a court appointed monitor was appointed. The TRO continues to enjoin FEN from seeking new distributors. Despite the TRO FEN has continued to seek out new distributors. The FTC action

does not address the need of FEN to be registered as an ESP, probably because this Commission determines what operations require ESP registration and is responsible for compliance with applicable provisions of the Public Utilities Code.

ORDER

IT IS ORDERED that:

1. An investigation on the Commission's own motion is instituted into the operations and business practices of the following respondent individuals and respondent corporate entities: Alan Setlin and Larry Huff, individuals responsible for directing operations of the corporate respondents: doing business as Future Electric Network, and the controlling corporate entities, Future Net Inc. and Future Net Online Inc.

2. Based on staff's investigation, there is good cause shown in staff's declaration to believe that respondents have violated the following laws and regulations which are applicable to Non-utility Electric Service Providers:

- a) Public Utilities Code § 394(a) by operating as an ESP without having been registered with the Commission, which is sanctionable under Public Utilities Code § 2107. FEN and/or affiliated parent corporations are subject to a fine not to exceed twenty thousand dollars (\$20,000.00) for each day that it operated without proper licensing.

- b) Public Utilities Code §2111 for failing to register as an ESP, in that Alan Setlin, and Larry Huff having control over entities (Future Net Online Inc., Future Net Inc., and Future Electric Network), knowingly refused to register the corporation known as Future Net Online Inc., or subsidiary Future Net, Inc., and it's subdivision Future Electric Network, as an ESP. The officers of the corporation, and the corporation itself may be fined a minimum of five hundred dollars (\$500.00) and up to twenty thousand dollars (\$20,000.00) for each offense.

3. FEN, Future Net Inc., and Future Net Online shall within ten days after service of this order on the designated agent for the service of process, provide CSD investigator Curtis Jung with copies of any and all Letters of Agency that FEN representatives have gathered and any and all names of consumers who have agreed to become FEN consumers after the March 31, 1998 effective date of direct access.

4. FEN, Future Net Online Inc., and Future Net Inc., are to provide CSD investigator Curtis Jung with a detailed description of stock ownership for each entity, a list of directors and their duties with respect to each entity, and a list of corporate officers and their duties and responsibilities with respect to each entity. This information is to be received within 10 days after service of this order on the designated agent for the service of process.

5. If CSD staff finds good cause to seek to have this order amended to name additional individual respondents it may file a motion with supporting declarations, and the Commission will expeditiously consider the matter.

6. The respondents shall appear at a hearing before an Administrative Law Judge on May 11, 1998 at 1:00 p.m. in the Commission's Courtroom, 505 Van Ness Avenue, San Francisco, California, 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, and why fines should not also be imposed for any violations of the statutes listed above. The respondents are placed on notice that if it appears at the conclusion of the hearing that they are conducting ESP operations without being registered, the ALJ may at that time grant a motion to waive the 30-day comment period otherwise provided for by § 311 of the Public Utilities Code, because halting unlawful ESP operations can constitute an unforeseen emergency situation.

7. The respondents shall preserve all documents and other materials which could be germane to this investigation.

Scoping Information: This paragraph suffices for the preliminary scoping memo required by Rule 6C of the Commission Rules of Practice and Procedure. This enforcement proceeding is adjudicatory in nature and is to be set for an evidentiary hearing. If, after the conclusion of the hearing for the respondents to show cause, a prehearing conference is needed, one will be scheduled and held within 20 days, and any further hearings will be held as soon as practical thereafter. The issues are those framed in the above order. CSD staff shall present witnesses in the support of the aforementioned allegations, and may present any additional evidence in prepared form concerning the respondents' activities bearing on the alleged violations so long as it is served 10 days before the hearing. Objections to the OII/OSC may be filed, but must be confined to jurisdictional issues which could nullify any eventual Commission decision on the merits of the alleged violations of statutes, regulations or Commission orders.

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The Executive Director shall cause this order and staff's declaration to be personally served, if possible, upon the individual respondents, or in the event service cannot be effected, to serve it by courier service with receipt of delivery upon them at the corporate respondents' designated agent for the service of process: 28640 Avenue Stanford, Valencia, CA 91355, attention Alan Setlin. Service on the corporate respondents shall be made by personal delivery to the designated agent for the service of process listed above. A copy of this order shall also be served by mail the respondents' local counsel: Thomas MacBride, Goodin, MacBride, Squeri, Schotz & Ritchie, LLP, 505 Sansome, Suite 900, San Francisco, CA 94111.

This order is effective today.

Dated April 23, 1998, at Sacramento, California.

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

ALJ/LTC/jac

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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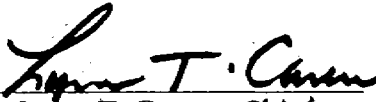
Respondents.

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

NOTICE OF REASSIGNMENT

Please be advised that I.98-04-033 is assigned to Commissioner Josiah L. Neeper and Administrative Law Judge Maribeth A. Bushey.

Dated April 27, 1998, at San Francisco, California.


Lynn T. Carew, Chief
Administrative Law Judge