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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
SAN FRANCISCO OFFICE

Order Instituting Investigation on the Commission's own motion and Order to Show Cause into the operations and practices of Aijaz Ali Khan and Clara Ines Martinez, dba People's Electric Supply Company, ESP # 1222

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Respondents.

**ORDER INSTITUTING INVESTIGATION
AND TO SHOW CAUSE**

I. INTRODUCTION

This Commission is charged with regulating electric service providers (ESPs) under the statutory scheme laid out in Public Utilities Code §§ 330 et seq.¹ In keeping with that scheme, the Commission registers ESPs for the protection of consumers under §§391-396.

The investigative staff of our Consumer Services Division (CSD or staff) has advised us, through a supporting Declaration, that it has investigated Aijaz Ali Khan and Clara Ines Martinez, partners doing business as People's Electric Supply Company, or PESCO (collectively, Respondents), at 1919 Quail Lakes Drive, Stockton, California 95207. PESCO received registration authority to operate as an ESP on December 15, 1997. On March 26, 1998, we issued Decision (D.) 98-03-072 in Rulemaking (R.) 94-04-031. On March 30, 1998, Administrative Law Judge John Wong issued an ALJ's Ruling in that proceeding, which was sent to all ESPs, in which he outlined all the responsibilities of ESPs

¹ Unless otherwise noted, all statutory references are to the California Public Utilities Code.

under D.98-03-072. ESPs who had received authority prior to that time were required to perform certain informational tasks in order to prevent the suspension of their registrations. On April 1, 1998, Paul Clanon, the Director of the Energy Division, sent a letter to all currently registered ESPs to inform them of the changes and of the results of failure to comply.

By letter dated April 14, 1998, Khan informed Clanon that PESCO wished to be placed on inactive status. On August 18, 1998, Clanon issued a letter informing Respondents that PESCO's authority had been suspended for failure to comply with the requirements set forth in D.98-03-072. Nevertheless, PESCO's registration, though suspended, for technical reasons but could be reactivated to active status as an ESP.

According to the allegations made in staff's Declaration, Respondents have never submitted a contract with a Utility Distribution Company (UDC). Without such a contract in effect, PESCO has no means by which to sell electricity. CSD alleges that Respondents have used PESCO's ESP registration to defraud people in two ways. First, they sold "distributorships" for approximately \$500 each; some of the victims, thinking they were working for PESCO, actually signed up customers, but never realized any income from the transactions. Second, Respondents directly took deposits, ranging from \$39 to \$500, from small businesses who thought they were signing up to become PESCO's customers, but who never received any electric service from PESCO because it had none to provide. PESCO's marketing promised 20% discounts from regular utility rates. According to CSD's allegations, some of these "customer" victims asked for and were promised refunds, but never received them. Behavior such as that alleged is grounds for suspension and/or revocation of registration under § 394.25 (b), subdivisions (1) and (2).

If these allegations are true, our Commission-assigned registration number is being used, essentially, to facilitate the taking of money from California

consumers without giving them anything of value in return. We cannot allow such an abuse of the electric industry restructuring process. Respondents appear not to have entered, or to have any intention of entering, the market. Thus, if the facts advanced by CSD are correct, PESCO's ESP registration appears to serve no purpose other than, at worst, to defraud consumers, or, at best, to generate start-up capital from consumers without ever giving them any return on their unwitting investment.

We are informed by CSD that Respondents Khan and Martinez left their address of record in mid-September of 1998, and have left no forwarding address, making personal service difficult, to say the least. However, we require all ESPs to keep the information filed with us current, as provided in § 394.1 (d). If an ESP chooses to violate the statute so that process cannot be served, it cannot complain if service is not personal. We will direct CSD to serve at least one of the partners at the address Respondents have given us, with their registration, for service of process, and to offer us proof of such service. We also direct CSD to continue to look for Respondents, if they are not served by mail, with reasonable diligence, until the hearings are held, to attempt to effect personal service of this Order and the notice of hearing on Respondents if it finds them, and to offer proof of such efforts at hearing.

Because the evidence offered in the staff's Declaration is substantial enough to support the allegations, because CSD has demonstrated good cause to believe that violations have occurred, and because of the seriousness of the abuses alleged, we order Respondents Aijaz Ali Khan and Clara Ines Martinez, dba People's Electric Supply Company, or PESCO, to appear before us and show cause why their ESP registration should not be revoked. Should they fail to appear at hearings to be set by the Assigned Commissioner and/or Administrative Law Judge, and if CSD can bring evidence of its diligent attempts to find Respondents

and serve them with notice of such hearings, the subject operating authority, and ESP registration # 1222, may be revoked.

IT IS ORDERED that:

1. Respondents Aijaz Ali Khan and Clara Ines Martinez, partners dba People's Electric Supply Company, (Respondents), are ordered to appear at such time and place as the assigned Commissioner and/or Administrative Law Judge shall set, to show cause why their ESP registration should not be revoked with prejudice.

2. Should Respondents fail to appear, and if CSD can bring evidence of its diligent attempts to find Respondents and serve them with notice of such hearings, the subject operating authority, ESP registration # 1222 may be revoked.

3. Respondents are alleged to have violated the following orders and statutes, and, in addition to facing potential revocation of this registration under § 394.25 (b), may be fined under § 394.5 and other applicable provisions of the Public Utilities Code (including, but not limited to, §§ 2107 and 2108):

- a. Violation of D.98-03-072 which can result in a fine under §§ 2107 and 2108, by conducting business as an ESP (i.e., soliciting customers and taking deposits) without having met all the requirements set forth in D.98-03-072 and enumerated in the ALJ Ruling of March 30, 1998 (1998 C.P.U.C. LEXIS 182), including among other things: submitting a fingerprint card, filing a contractual agreement with a UDC, filing a security bond and submitting a service plan;
- b. Violation under § 394.25 (b) which is grounds for revocation, by making material misrepresentations about ESP viability and/or claims of savings in the course of soliciting customers, and entering into service agreements with those customers;
- c. Violation under § 394.25 (b) which is grounds for revocation, by fraudulently taking deposits, from at least nineteen "customers," for electric service which PESCO was in no position to provide; and

- d. Violation of D.98-03-072 which can result in a fine under § 2107, by failing to provide certain information when requested to do so by Energy Division.

4. Respondents are hereby ordered to immediately cease and desist any and all fraudulent use of their ESP registration, and any other use which is illegal under the laws of this state. They shall not solicit any additional customers until further order of this Commission, and shall preserve funds sufficient to make restitution to victims if it is so ordered by the Commission.

5. CSD should continue its investigation during the pendency of this proceeding, and, should it obtain evidence of any new violations or new instances of the violations listed herein, bring that evidence before us at any time until the matter is submitted.

6. Scoping Information: This paragraph suffices for the "preliminary scoping memo" required by Rule 6(c). This enforcement proceeding is adjudicatory, and, absent settlement between staff and the respondent, will be set for evidentiary hearing. A hearing may also be held on any settlement for the purpose of enabling parties to justify that it is in the public interest, or to answer questions from the ALJ about settlement terms. A prehearing conference or evidentiary hearing will be scheduled and held within 40 days and hearings will be held as soon as practicable thereafter. Objections to the OII may be filed but must be confined to jurisdictional issues which could nullify any eventual Commission order on the merits of the issues about violations of statutes, rules, regulations or orders.

7. The Executive Director is directed to cause service of this Order, and the subsequent notice of hearing, on the Respondents at the address they have given the Commission for service of process, and to have staff continue to look for Respondents, with reasonable diligence, until the hearings are held. He is also directed to cause staff to attempt to effect personal service of this Order, and of the

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notice of hearing, on Respondents, if it finds them, and to offer proof of such efforts and/or service at hearing. If staff cannot locate and serve at least one of PESCO's partners, it shall at any hearing submit a declaration explaining the efforts made to locate Respondents.

This order is effective today.

Dated _____, at San Francisco, California.