

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire's
Petition for Approval Power Purchase Agreements with
Lempster Wind, LLC

Docket No. DE 08-077

**OBJECTION OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
TO
MOTION FOR RECONSIDERATION
OF
FREEDOM ENERGY PARTNERS, LLC**

Pursuant to N.H. Code Admin. Rule Puc §203.07(f),¹ Public Service Company of New Hampshire ("PSNH") hereby objects to the Motion for Reconsideration ("Motion") filed by Freedom Partners, LLC ("Freedom").² In support of its Objection, PSNH says the following:

I. INTRODUCTION

PSNH is under a statutory obligation to acquire and retire a certain number of Renewable Energy Certificates ("RECs") annually through the year 2025. RSA 362-F:3. PSNH entered into certain fifteen year agreements with Lempster Wind, LLC ("Lempster") to purchase power, capacity and RECs. PSNH submitted those agreements to the Commission on May 29, 2008, requesting approval under RSA 362-F:9. (Exhibits 2 and 3).

A hearing on the merits was held on February 5, 2009, at which PSNH offered the pre-filed direct testimony of Mr. Sheldon B. Wicker, Jr. (Exhibit 1). Mr. Wicker was subject to cross examination. On May 1, 2009, the Commission issued its Order No. 24,965

¹ PSNH was served with the Motion and the Memorandum in Support of Freedom's Motion for Reconsideration ("Memorandum") on May 19, 2009. This Objection is timely filed, as Rules Puc §203.07(f) and Puc § 202.03(c) permit a full five business days in which to file an objection.

² In the Memorandum at footnote 1, Freedom notes, "Freedom's (sic) Partners, LLC is a different corporate entity from Freedom Logistics, LLC." According to the New Hampshire Secretary of State, Freedom Partners, LLC, is a corporation not in good standing in New Hampshire.

approving both the purchase power agreement and the REC option agreement. On May 19, 2009, Freedom filed its Motion and supporting Memorandum.³

II. SUBSTANTIVE OBJECTIONS

A. There is no restriction on the use of Lempster RECs purchased by PSNH.

Freedom claims that under RSA 362-F:9, I, RECs purchased by PSNH from Lempster Wind can only be used to meet New Hampshire RPS requirements. As a result, Freedom asserts that the Order is erroneous as a matter of law because it allows PSNH to maximize the value of such RECs by sale of such RECs outside of New Hampshire if higher value can be obtained in other New England markets. Freedom's reading of the law is incorrect.

In a nutshell, RSA 362-F:9 provides the Commission with authority to approve multi-year purchase agreements by electric distribution companies with renewable energy sources for RECs to meet reasonably projected renewable portfolio requirements, if such agreements are in the public interest. The record reflects Mr. Wicker's assertion that acquisition of the Lempster RECs are within the reasonably projected needs of PSNH. *Transcript*, February 5, 2009, at 65. Therefore, the Order fully complies with the law.

Once such purchase is approved, nothing in the law mandates that an electric distribution company must forego economic opportunities to re-sell such RECs for the benefit of its retail customers. Mr. Wicker testified that PSNH will try to maximize the value of the RECs for the benefit of its customers. *Id.* at 25. Such maximization of value for the benefit of customers is part of the public interest standard contained in RSA 362-F:9. Indeed, RSA 362-F:9, II, (a) expressly includes efficiency and cost-effectiveness as part of the public interest consideration. RSA 362-F:9, II, (b) requires the public interest standard to be substantially consistent with the restructuring policy principles of RSA 374-F:3 - - which calls for "near term rate relief" and "lower prices for all customers." RSA 364-F:3, X.

³ Under RSA 541:3, a motion for rehearing should specify all grounds for rehearing, and under RSA 541:4 "Such motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." Freedom's Motion only states, "For the reasons stated in the accompanying Memorandum in Support of Motion for Reconsideration, the Order is contrary to law, and unreasonable." Assuming the Commission will ignore these technical infractions of the appeal statute, PSNH will respond to the arguments made in Freedom's Memorandum.

Freedom's reading of RSA 362-F:9 would prohibit electric distribution companies from maximizing the value of RECs, thereby increasing costs to consumers – a result contrary to the requirements of that very law.⁴

B. Electric distribution companies are not required to seek Commission approval under RSA 362-F:9 before entering into a long term contract for the purchase of RECs.

Freedom claims that Commission pre-approval is necessary before an electric distribution company may enter into an agreement with renewable energy sources for RECs. Once again, Freedom is incorrect.

The purpose of RSA Chapter 362-F, the Electric Renewable Portfolio Standard, is set forth in RSA 362-F:1. The law's purpose is summed up in the last sentence:

It is therefore in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities.

Freedom's claim is again contrary to the law. The law finds that it is in the public interest to stimulate investment in renewable generation technologies, not to restrict it.⁵ Agreements by the state's electric distribution companies to purchase RECs from renewable energy developers is likely the largest potential investment source available to stimulate the development of renewable energy.

C. A utility does not need approval of the Commission to enter into an agreement which will be booked below the line.

Freedom seeks rehearing on the issue of whether a utility requires approval of the Commission to enter into an agreement which will be booked below the line. That fact situation is not in issue in this case, as PSNH is not seeking to book the arrangements with

⁴ In another recently-docketed proceeding, counsel for Freedom has asserted that "PSNH has the obligation under RSA 378:37 and 38 'to develop and implement an integrated resource plan that satisfies customer energy service needs at the lowest overall cost consistent with maintaining supply reliability.'" Complaint of Clean Power Development, LLC Against Public Service of New Hampshire, Docket No. DE 09-067, April 7, 2009, at ¶18. It is curious that in the instant docket, Freedom argues that PSNH's opportunity to satisfy customer energy service needs at the lowest overall cost is contrary to law.

⁵ Counsel for Freedom has cited this same law in the Complaint cited in the previous footnote, at ¶17 (the second ¶17 in that Complaint, found between ¶¶18 and 19).

Lempster below the line; hence, it is not a proper ground for rehearing. “There is no right to an adjudication of matters not in contention.” *Conway v. New Hampshire Water Resources Bd.*, 89 N.H. 346 (1038). Nonetheless, should the Commission deem it necessary to address this specification, PSNH provides the following discussion.

Freedom baldly asserts, “As a regulated utility, if PSNH wants to enter an agreement for use ‘below the line,’ it needs authorization from the Commission to do so.” Freedom provides absolutely no authority for this legal claim.

To the contrary, Freedom correctly cites to *Appeal of Public Service Company*, 122 N.H. 1062 (1982). In that case, the New Hampshire Supreme Court stated, “This court has long recognized as public policy that the owners of a utility do not surrender to the PUC their rights to manage their own affairs merely by devoting their private business to a public use.” *Id.* at 1066-67.⁶ Despite Freedom’s citation to this Supreme Court decision, the Memorandum ignores this very holding and continues on in an incoherent manner in its attempt to create law, where none exists.

Freedom’s Memorandum does not cite a single case or decision holding that a utility must obtain Commission approval for activities which will be booked below the line. The Commission’s own rules anticipate that certain utility activities are conducted below the line. Rule Puc 310 requires utility promotional, political and institutional advertising or activities to be booked below the line; utilities do not need pre-approval of those transactions. Gas utilities have regularly engaged in non-utility businesses below the line, such as retail propane and appliance sales -- even a retail space storage business.⁷

Moreover, Freedom lacks standing to raise this issue.⁸ During the June 27, 2008 procedural hearing in this docket (which Freedom did not attend), the Commission was informed that Freedom had agreed to limit its intervention to issues related to Renewable

⁶ See also, *Appeal of Easton*, 125 N.H. 205, 211 (1984).

⁷ “Manchester Gas has numerous nonutility businesses, which recently have included bottled propane gas and merchandising gas appliances. Pursuant to a consumer complaint, the commission was made aware of a new nonutility business called Rent-A-Space. This storage business, which bloomed to existence with a \$100,000 investment, is operated by Manchester Gas employees. . . .” *In re: Concord Natural Gas Corp., Manchester Gas Company et al.*, 66 NH PUC 48, 49-50 (1981). Once the holding company EnergyNorth, Inc. was formed, the utility was somewhat proud of successfully operating its non-utility business within the holding company structure. *In re: Concord Natural Gas Corp.*, 70 NH PUC 632, 637 (1985).

⁸ “...a party’s standing is a question of subject matter jurisdiction, which may be addressed at any time. *Hughes v. N.H. Div. of Aeronautics*, 152 N.H. 30, 35 (2005).” *Libertarian Party of New Hampshire v. Secretary of State*, 158 N.H. 194, 195 (2008).

Energy Certificates and the REC market. *Transcript*, June 27, 2008, at 6-7. Freedom's intervention in this proceeding was granted "subject to the conditions agreed to between Freedom and Public Service Company of New Hampshire." *Id.* at 40. This specification for rehearing falls outside this consented-to limitation.⁹

D. The Commission was correct in determining that the energy prices will be reasonable over the course of the term of the Power Purchase Agreement.

Next, Freedom complains that the Commission's finding that the energy floor price is set "at a price level that is significantly discounted from current market energy prices" is unreasonable and contrary to the evidence. There is ample factual basis in the record to support the Commission's finding.

Mr. Wicker testified as follows:

Q. Do you believe these Agreements are beneficial for PSNH's customers and will meet the requirements of the New Hampshire RPS program?

A. Yes. We believe the Agreements provide energy and capacity for our customers at prices that are below market and lower our future cost of purchased power. These Agreements also add a new source of renewable generation in New Hampshire, wind power, to help PSNH meet its New Hampshire RPS requirements. Exhibit 1 at 10.

Freedom attempts to contradict this evidence by stating that "Moreover, PSNH's estimated forward prices were compared to the values shown on the ICAP Energy quote sheet. The ICAP Energy quotes (which PSNH was familiar with) were lower than Mr. Labrecque's estimates." Memorandum at 5. Attorney Rodier admitted that the witness he was cross examining, Mr. Wicker (not Mr. Labrecque), "may not be familiar with this [the ICAP Energy Quote Sheet]." *Transcript*, February 5, 2009 at 31. More significantly, the ICAP Energy quote sheet is not made part of the record; the prices on the ICAP Energy quote sheet were not read into the record; and, Mr. Wicker never admitted that Mr. Labrecque's numbers were higher or lower than the ICAP Energy quote sheet. There is no record

⁹ But for the agreement limiting Freedom's intervention, PSNH objects to Freedom's participation in this proceeding as it lacks standing. Rather than repeat its standing objection here, PSNH refers the Commission to the objection on standing regarding Freedom Partners' affiliates (Freedom Logistics, LLC and Halifax-American Energy Company, LLC) in its Brief filed on May 22, 2009, in Docket No. DE 08-145, and incorporates those arguments herein by reference.

evidence of what the ICAP Energy quote sheet contained; therefore, the Commission should not rely on it.

The Memorandum goes on to cite the ISO-NE Monthly Market Operations Report for March 2009. Memorandum at 5. Freedom asks the Commission to take administrative notice of the ISO-NE Monthly Market Operations Report for March 2009. *Id.* This request to take administrative notice is untimely. Under RSA 541-A:33, VI, “[p]arties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed.” *See also*, Rule Puc § 203.27 (b). This March Report was created and issued after the record was closed in this proceeding. Freedom is using a snapshot of energy prices and quotes for an entirely different market in a feeble attempt to prove that fifteen years of pricing under the Purchased Power Agreement is unreasonable.¹⁰ Despite the evidentiary shortcomings of this attempt, the argument fails on the merits.

Freedom sums up this specification for rehearing by asserting that, “The evidence supports Freedom’s assertion that customers are likely to pay higher bills during 2009.” Memorandum at 5. As discussed earlier, due to the agreed-upon limitations on Freedom’s intervention in this proceeding, Freedom lacks standing to raise this issue. This specification for rehearing falls outside of the consented-to limitation on intervention (*i.e.*, issues related to Renewable Energy Certificates and the REC market.)

E. There is no need for the Commission to strike the “litmus test” language from its order.

Freedom complains that the Commission’s Order misconstrues an issue in the proceedings. As a result, Freedom moves to have certain wording stricken from the Order. There is no need for the Commission to do so.¹¹

¹⁰ This logic is analogous to concluding that if the spot price of oil decreases on a particular day, a decision made months earlier to enter into a pre-buy plan for heating oil for the upcoming winter was an incorrect decision.

¹¹ The cross examination by Attorney Rodier of Mr. Wicker on the area of negotiations with other small power developers (Transcript, February 5, 2009 at 33 -36) is irrelevant to whether the Lempster agreements should be found in the public good. It is now obvious that Attorney Rodier was conducting this cross examination for the benefit of another client of Attorney Rodier, Clean Power Development, LLC. *See*, Docket No. DE 09-067.

As discussed earlier, due to the agreed-upon limitations on Freedom's intervention in this proceeding, Freedom lacks standing to raise this issue. This specification for rehearing falls outside this consented-to intervention (*i.e.*, issues related to Renewable Energy Certificates and the REC market.)

F. The Commission's Order No. 24,965 fully complied with RSA 378:41.¹²

Freedom's last specification for rehearing asserts, "The Commission's Order is unlawful because it does not comply with the requirements of RSA 378:41 which require a reference to conformity of the decision with the least cost integrated resource plan most recently filed and found adequate by the Commission. There is no such reference in the Order." Freedom is just plain wrong. The Order contains multiple references to the least cost integrated resource plan statutes.

Mr. Wicker's testimony addressed the least cost integrated resource plan issue directly: "In PSNH's Integrated Least Cost Resource Plan filed on September 30, 2007, PSNH discusses the need to enter into longer-term contracts with renewable facilities that produce RECs." Exhibit 1 at 9. Mr. Mullen addressed this issue in his testimony. Exhibit 8, page 7, lines 7 through 24.

In the context of the decision, the Commission quoted the provisions of RSA 362-F:9,

II

In determining the public interest, the commission shall find that the proposal is, on balance, substantially consistent with the following factors:

...

(c) The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost resource plan pursuant to **RSA 378:37-41**, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers;

Order No. 24,965 at 16 (Emphasis added).

The Commission specifically found

¹² This specification is identified as the second subparagraph E by Freedom in its Memorandum.

The Lempster Wind project is a new, renewable generating source that introduces no new pollution or harmful emissions into the environment. These agreements support the financial viability of the project and, therefore, are consistent with the environmental principles of the electric utility restructuring statutes (RSA 374-F:3, VIII and IX) and New Hampshire's energy policy set forth in RSA 378:37.

Id. at 17.

Clearly the requirements of RSA 378:41 have been satisfied both "within the context of the hearing and the decision" in this proceeding.

As discussed earlier, due to the agreed-upon limitations on Freedom's intervention in this proceeding, Freedom lacks standing to raise this issue. This specification for rehearing falls outside this consented-to intervention (*i.e.*, issues related to Renewable Energy Certificates and the REC market.)

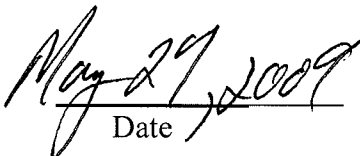
III. CONCLUSION.

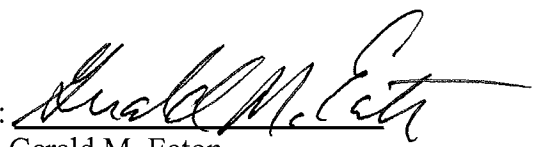
Freedom lacks standing to participate in this proceeding. PSNH consented to, and the Commission granted, Freedom's participation in this proceeding on a very limited basis intended to minimize disruption to an orderly proceeding. Freedom's rehearing request violates both the spirit and the letter of its limited intervenor status.

The facts and citations to the record, case law and previous Commission decisions supplied herein clearly show that Freedom has not demonstrated good reason for granting a rehearing, and Freedom's Motion/Memorandum should be dismissed.

Respectfully submitted,

Public Service Company of New Hampshire


Date

By: 
Gerald M. Eaton
Senior Counsel
780 North Commercial Street
P.O. Box 330
Manchester, New Hampshire 03105
(603) 634-2961

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Objection to Freedom Energy Partners' Motion for Reconsideration to be hand delivered or served pursuant to Puc § 203.02 and Puc § 203.11(c) to the persons on the attached Service List.

May 27, 2009
Date

By: Gerald M. Eaton
Gerald M. Eaton
Senior Counsel
Public Service Company of New Hampshire
780 North Commercial Street
P.O. Box 330
Manchester, New Hampshire 03105
(603) 634-2961