

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DE 09-180
2009 DEFAULT ENERGY SERVICE RATE CHANGE

MOTION TO COMPEL RESPONSES TO DATA REQUESTS NOS. 2 AND 3

NOW COMES Freedom Logistics, LLC (Freedom) and Halifax-American Energy Company, LLC (Halifax) and hereby motion the New Hampshire Public Utilities Commission to compel responses to Data Requests Nos. 2 and 3 pursuant to Puc 203.09. In support of its Motion, Movants say the following:

1. By letter dated November 5, 2009, PSNH objected to the following data requests propounded by Freedom Logistics, LLC and Halifax-American Energy Company, LLC.:

No. 2. Provide a copy of any study or analysis available to or in the possession of PSNH which forecasts or estimates market prices over the next five years.

No. 3. Provide a copy of any study or analysis available to PSNH which forecasts or estimates ES Default rate prices over the next five years.

2. According to PSNH's letter, the reason for PSNH's objection is that there is [n]othing in the Commission's Order of Notice or in PSNH's filing [which] addresses any period beyond 2010."

3. This is simply not the case. PSNH's pre-filed statement directly addresses the period beyond 2010 (Emphasis added):

Q. Will the upward pressure on ES rates continue into the future?

A. **Such a question can only be answered with knowledge of future migration levels and the related levels of alternative market prices.** During the current unprecedented market price decline, suppliers have been successful in offering certain customers lower prices than the price calculated in the ES rate formula. **How long this price differential will last is not known**, nor is the pricing or terms of the current third party contracts. If market prices in the future increase once again over the ES rate level, PSNH expects that some or all of these customers on third party supply may migrate back to PSNH's ES default rate.

4. The data requests that PSNH has objected to seek data related to the future "price differential" which, according to PSNH, is needed to estimate future migration levels and any

resulting impact on smaller customers. According to Mr. Baumann “**knowledge of future migration levels and the related levels of alternative market prices**” are necessary to an adjudication of this issue raised by PSNH.

5. The discovery rule applied by the Commission in these proceedings is liberal. See Re Public Service of New Hampshire, 86 NH PUC 730, Order No. 23,831 at 7 (2001) (granting City of Berlin’s motion to compel and ordering PSNH to provide requested discovery). The scope of discovery is broad, extending to information that is “relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence.” Id. at 6; Re Public Service Company of New Hampshire, 89 NH PUC 226, Order No. 24,310 at 5 (2004).

6. The Commission will deny discovery requests only when it “can perceive of no circumstance in which the requested data will be relevant.” Re Public Service of New Hampshire, 86 NH PUC 730; Order No. 23,831 at 6; Re Public Service Company of New Hampshire, 89 NH PUC 226, Order No. 24,310 at 5.

7. A party in a legal proceeding in New Hampshire is entitled to “be fully informed and have access to all evidence favorable to his side of the issue. This is true whether the issue is one which has been raised by him or by his opponent, and whether the evidence is in the possession of his opponent or someone else.” Scontsas v. Citizens Insurance Co. of New Jersey, 109 N.H. at 388.

8. Movants has made a good-faith effort to resolve the dispute informally.

WHEREFORE, Freedom Logistics, LLC (Freedom) and Halifax-American Energy Company, LLC (Halifax) hereby respectfully request the Commission to compel PSNH to respond to Data Requests Nos. 2 and 3 and to order such other and further relief as may be just and equitable.

Respectfully submitted,

FREEDOM LOGISTICS, LLC and
HALIFAX-AMERICAN ENERGY
COMPANY, LLC

By their Attorney


/s/ James T. Rodier

1500A Lafayette Road, No. 112
Portsmouth, NH 03801-5918
603-559-9987

Dated: November 12, 2009

Certification of Service

Pursuant to Rules Puc 203.02(2) and Puc 203.11, I have served copy of this petition on each person identified on the commission's service list for this docket.

/s/ James T. Rodier