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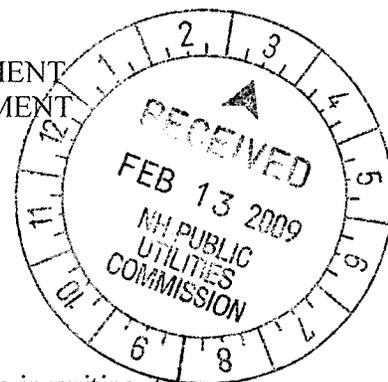
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February 11, 2009

Debra A. Howland
Executive Director and Secretary
State of New Hampshire
Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

PETITION FOR APPROVAL OF POWER PURCHASE AGREEMENT
AND RENEWABLE ENERGY CERTIFICATE OPTION AGREEMENT
BETWEEN PSNH AND LEMPSTER WIND, LLC

DE 08-077



Dear Ms. Howland:

Intervenor Freedom Partners, LLC d/b/a Freedom Energy hereby submits in writing its closing argument with respect to the issues raised in our cross-examination of the PSNH witness in this proceeding.¹

Introduction

On May 29, 2008, Public Service Company of New Hampshire (PSNH) filed a petition pursuant to RSA 362-F:9 for approval of a Power Purchase Agreement (PPA) and Renewable Energy Certificate (REC) Option Agreement (collectively, the Agreements) between PSNH and Lempster Wind, LLC (Lempster Wind). Pursuant to the terms of the Agreements, PSNH will purchase 100% of the energy, capacity and NH RECs from Lempster Wind, with Lempster Wind having the option to repurchase a certain percentage of the RECs from PSNH at a price that includes a premium above the price originally paid by PSNH.

The hearing was held on February 5, 2009.

¹ We have not had the benefit of reviewing the transcript before submitting these comments.

I. **Applicable Law**

The Commission may authorize an electric distribution company “to enter into multi-year purchase agreements with renewable energy sources for certificates, in conjunction with or independent of purchased power agreements from such sources, to meet reasonably projected renewable portfolio requirements and default service needs to the extent of such requirements...” RSA 362-F:9,I (Emphasis added).

II. **Discussion**

A. PSNH has no authority to enter into the Agreements under any circumstances without Commission authorization.

PSNH testified that the Lempster Wind became commercially operational on December 10, 2008. Since that time, PSNH has purchased 100% of the energy, capacity and NH RECs from Lempster Wind pursuant to the Agreements. PSNH has accounted for those purchases “above-the line” as if the Agreements had already been approved by the Commission pursuant to RSA 362-F:9,I. PSNH also testified that if the Agreements are not approved by the Commission, the purchases from Lempster Wind will be taken “below-the- line” and would not be subject to the Commission’s jurisdiction.

PSNH is an electric distribution company; PSNH has no authority to enter into the Agreements without Commission authorization. The language of RSA 362-F:9,I is clear; the PUC need look no further than “the plain and ordinary meaning of the words used.” *See, e.g., Green Crow Corp. v. Town of New Ipswich*, 950A.2d 163, 164-165, N.H. (2008) (“We look to the plain and ordinary meaning of the words used in the statute and will not examine legislative history, consider what the legislature might have said, or add words not included in the statute.”)

PSNH has no authority to enter into the Agreements under any circumstances without prior Commission authorization.

B. REC’s purchased by PSNH pursuant to RSA 362-F:9,I may be used only to meet reasonably projected renewable portfolio requirements in New Hampshire.

PSNH testified that it will not use the REC’s purchased under the Lempster PPA to meet its New Hampshire renewable portfolio requirements if higher value can be obtained by selling the RECs into other New England markets.

The Commission may authorize PSNH “to enter into multi-year purchase agreements with renewable energy sources for certificates..., to meet reasonably projected renewable portfolio requirements...” RSA 362-F:9,I (Emphasis added). PSNH’s only renewable portfolio requirement is in New Hampshire. PSNH has no portfolio requirement in any other New England state. The language of RSA 362-F:9,I is clear; the PUC need look no further than “the plain and ordinary meaning of the words used.” Accordingly, REC’s purchased by PSNH pursuant to RSA 362-F:9,I may be used only to meet reasonably projected renewable portfolio requirements in New Hampshire.

C. During 2009, PSNH customers are likely to pay higher bills if the Commission authorizes PSNH to enter into the Lempster Agreements.

PSNH testified that the forward price for a flat block of energy would be about 6 cents per kwh. Base upon the witness’s demeanor in making this assertion, the clear implication was that PSNH’s estimated forward price was above the floor price set out in the Agreement. However, PSNH’s estimated forward price was contradicted by the values shown on the ICAP Energy quote sheet. The ICAP Energy quotes (which PSNH are familiar with) indicate that the forward price for a flat block of energy could be below 5 cents per kwh for most of 2009. If this should come to pass, PSNH’s customer are likely to pay an amount significantly above the prevailing nodal LMP for most of 2009.

During 2009, PSNH customers are likely to pay higher bills if the Commission authorizes PSNH to enter into the Lempster Agreements. However, this is not to say that purchases would be uneconomic over the 15-year deal term should energy costs return to the levels which prevailed in the first half of 2008.

D. The disparity in treatment of transmission costs is a very substantial impediment for a renewable resource to enter into an agreement with any entity other than PSNH.

PSNH testified that Lempster would not be charged for any transmission costs upstream from the 34.5Kv interconnection point. PSNH asserted that there are no transmission costs.

However, if Lempster were to sell to any other entity, Lempster (directly or indirectly) would be responsible for any local transmission services from PSNH pursuant to PSNH’s local transmission tariff and any NEPOOL Pool Transmission Facility (PTF) services pursuant to the NEPOOL open access transmission tariff.

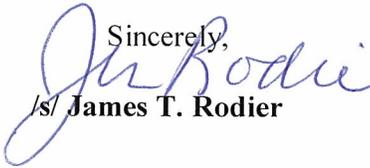
This disparity in treatment is a very substantial impediment for a renewable resource to enter into an agreement with any entity other than PSNH. This would clearly conflict with RSA 362-F:9's goal of "promot[ing] market-driven competitive innovations and solutions."

E. In order to negotiate with PSNH, there should be no litmus tests and every developer should be treated objectively.

PSNH testified that the Agreements "form a model for future negotiations..." PSNH further testified under cross-examination that PSNH has an open door policy for all renewable resource developers and that all proposals of any kind would be considered in good faith and treated strictly on their merits. There are no litmus tests. According to PSNH, "Nobody would be in or out because of who they are."

In order to make sure that all renewable resource developers have a fair and equal opportunity to sell to PSNH, the Commission should ratify PSNH's assertion that there are no litmus tests and that every developer will be treated objectively and in good faith.

Thank you for opportunity to provide these comments on these issues. I have complied with the filing requirements set out in Puc 203.02.

Sincerely,

/s/ James T. Rodier