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August 21, 2009

Clerk
New Hampshire Supreme Court
One Noble Drive
Concord, NH 03301



**APPEAL OF FREEDOM PARTNERS, LLC
UNDER RSA 541:6 AND RSA 365:21
FROM ORDER OF PUBLIC UTILITIES COMMISSION**

SUPREME COURT DOCKET NO. 2009-0521

Dear Clerk:

Please find enclosed an Original and 7 copies of Appellant's Objection to PSNH'S Motion For Summary Disposition.

Thank you.

Sincerely,
/s/ James T. Rodier
James T. Rodier

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

**APPEAL OF FREEDOM PARTNERS, LLC
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APPELLANT'S OBJECTION TO PSNH'S MOTION FOR SUMMARY DISPOSITION

Now Comes Appellant Freedom Partners, LLC's Objection to Appellee Public Service of New Hampshire's (PSNH) Motion For Summary Disposition, and in support hereof says as follows:

1. On July 23, 2009, Appellant filed an Appeal presenting to the Court four questions of law for review:

Did the PUC erroneously rule that, under RSA 362-F:9,1, PSNH may sell Renewable Energy Certificates obtained through the Lempster Agreements in other markets, notwithstanding the plain and ordinary meaning of the words used in RSA 362-F:9,1 requiring the Lempster REC's to be devoted to meeting PSNH's "reasonably projected renewable portfolio requirements?"

Did the PUC erroneously rule that, under RSA 362-F:9,1, PSNH was not required to seek Commission authority prior to entering into the agreements with Lempster, notwithstanding the plain and ordinary meaning of the words used in RSA 362-F:9,1 requiring that "the Commission may authorize an electric distribution company to enter into multi-year purchase agreements"?

Did the PUC erroneously rule that a factually incorrect statement in its Order does not constitute grounds for rehearing because it was not a "finding" relevant to the central matter in this docket?

Did the PUC erroneously rule that Commission's Order comported with the requirements of RSA 378:41 even though the Order did not reference to "conformity of the decision with the least cost integrated resource plan most recently filed and found adequate by the commission," as required by RSA 378:41?

2. Appellee PSNH filed a Motion For Summary Disposition ("Motion"), accompanied by a Memorandum of Law ("Memorandum") on August 12, 2009. The Motion contends that the Appellant's Appeal should be summarily affirmed because Appellant has no standing to bring this Appeal, there is no substantial question of law raised by the Appeal, and the Order is otherwise just and reasonable.

Appellant has Standing to Bring this Appeal.

3. PSNH contends that Appellant has no standing to bring this Appeal because it has suffered no injury in fact. In support of its contention, PSNH relied on this Court's recent holding in Appeal of Stonyfield Farm, Inc. & a. (August 5, 2009). PSNH's reliance on Stonyfield is misplaced. Appellant Stonyfield Farm was not a party in the proceeding below at the Public Utilities Commission ("PUC").

4. Appellant is a broker of Renewable Energy Certificates (RECs) and competes with PSNH to buy RECS from renewable energy facilities. PSNH Memorandum at 2 n1.

5. In this Appeal, Appellant Freedom Partners, LLC was an intervenor party in the proceeding below. Any party to the action or proceeding before the commission may apply for a rehearing. RSA 541:3. Within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court. RSA 541:6. Appellant applied to the PUC for a rehearing; as an "applicant," Appellant is entitled as a matter of law to appeal by petition to this Court.

6. In order to be granted intervenor party status, the PUC must find, as required by RSA 541-A:32, that the prospective intervenor has substantial interest that is affected by the proceeding. By the granting Appellant intervenor party status, the PUC impliedly found that Appellant had a substantial interest that would be affected in the proceeding below.

7. PSNH contends that Appellant's arguments merely "request an advisory opinion as to what PSNH might do with REC's generated by Lempster Wind in the future." PSNH Memorandum at 3. PSNH contends that it "has not sold REC's produced by Lempster Wind outside of New Hampshire or [sic] are any such sales proposed by PSNH to take place." Id. at 6 n2. However, PSNH's Errata Sheet filed with this Court on August 13, 2009 explains that PSNH representations to this Court that in this regard were "mistaken;" PSNH in fact sold Lempster RECs in May 2009 to an entity outside of New Hampshire well before this Appeal was taken.

8. PSNH also asserts that "R.S.A 362-F [Electric Renewable Portfolio Standard] may potentially apply to four electric distribution companies; however, only PSNH is now required to accumulate RECs to satisfy its renewable energy portfolio requirements." Motion at 3 (Emphasis supplied). This is a fundamental misstatement of the law. All New Hampshire electric utilities are required to accumulate RECs. See, e.g., Order No. 24,980 (June 19, 2009) (Unitil Energy

Systems, Inc. Order Approving Petition for Approval of Default Service Solicitation and Proposed Default Service Tariffs for Large Commercial and Industrial Customers) at 10.¹

9. The PUC's Orders at issue in this Appeal have enabled PSNH to sell out-of-state the REC's purchased by PSNH under RSA 362-F:9, and have allowed PSNH to collect from ratepayers the cost of REC purchases prior to PUC authorization of the agreements.

Accordingly, the Orders have presently and directly affected Appellant.

The Appeal Raises Substantial Questions of Law.

10. PSNH contends that the Appeal raises no substantial questions of law. On the contrary, the Appeal presents two straightforward questions of law pertaining to construction and interpretation of RSA 362-F:9, 1 which reads as follows:

Upon the request of one or more electric distribution companies and after notice and hearing, the commission may authorize such company or companies 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, if it finds such agreements or such an approach, as may be conditioned by the commission, to be in the public interest.

RSA 362-F:9, 1 (Emphasis added.)

11. According to this Court, the rules of statutory construction are well-settled:

We are the final arbiter of the meaning of a statute as expressed by the words of the statute itself. We look to the plain and ordinary meaning of the words used in the statute and will not examine legislative history unless the statutory language is ambiguous, consider what the legislature might have said, or add words not included in the statute. We interpret a statute to lead to a reasonable result and review a particular provision, not in isolation, but together with all associated sections. The legislature will not be presumed to pass an act leading to an absurd result and nullifying, to an appreciable extent, the purpose of the statute.

Green Crow Corp. v. Town of New Ipswich, 950 A.2d 163 (NH 2008) at 164, 165.

12. PSNH contends that the PUC may authorize PSNH to sell RECs purchased pursuant to RSA 362-F:9, I in markets outside of New Hampshire.

13. However, PSNH has conceded that RSA 362-F:9, I is unambiguous. PSNH Memorandum at 3. Accordingly, RSA 362-F:9, I should have been interpreted by the PUC in

¹ "Because DES has unbundled the G1 default service charges into separate power supply costs and RPS [Renewable Portfolio Standard] costs, we approve the revisions to the filing where the working capital component of the RPS charge was calculated using the net lag that relates to RPS costs only, rather than a net lag that relates to both power supply and RPS costs."

accordance with the plain and ordinary meaning of the words used in the statute if it leads to a reasonable result. The PUC should have ruled that the RECs should have been used to meet to meet reasonably projected New Hampshire renewable portfolio requirements, and not sold out-of-state. This most certainly would have been a reasonable result.

14. PSNH also contends that it was not required to seek approval from the PUC under RSA 362-F:9, 1 prior to entering into long term contracts for the purchase of RECs, notwithstanding the plain and ordinary meaning of the words used in RSA 362-F:9,1 requiring that “the Commission may authorize an electric distribution company to enter into multi-year purchase agreements”

15. Nonetheless, PSNH appears to have concurred with Appellant’s contention that PSNH should not enter into the agreements and begin collecting from ratepayers the cost of REC purchases prior to PUC authorization of the agreements:

It would be unreasonable to require PSNH and Lempster Wind to approach the Commission with some potential terms of a REC and power purchase agreement wondering what the Commission may eventually order to be included in the contract the Commission eventually authorized PSNH to enter into. It is more reasonable to expect distribution companies and REC producers to agree on specific terms, execute an agreement and present that final agreement to the Commission for review and approval under RSA 362-F:9

PSNH Memorandum at 12. (Emphasis supplied).

16. This is exactly what Appellant contends and what the PUC should have required. In this case, the Commission’s unlawful approval was granted approximately 16 months after the agreements were entered into, and approximately six months after PSNH began recovering its costs. In contrast, PSNH should have entered into the agreements subject to obtaining the necessary authorization from the PUC.

17. PSNH is involved in another analogous proceeding presently before the PUC wherein it seeks authorization for certain financings pursuant to RSA 369. Any public utility may apply to the commission for authority to issue securities. See RSA 369:3.

18. In that proceeding:

PSNH seeks the following authorizations by the Commission:

- (A) Pursuant to RSA 369:1, 3 and 4, authority to arrange for the issuance and sale of not more than \$150 million in principal amount of secured or unsecured Long-term Debt of one or more types, in more or more issuances, through December 31, 2009 and to take all actions necessary to consummate such financings, including but not limited to the issuance of a like principal amount of first mortgage bonds in one or more series to secure the repayment of Long Term Debt.

principal amount of first mortgage bonds in one or more series to secure the repayment of Long Term Debt.

Petition for Approval of the Issuance of Long Term Debt Securities at 4 (Docket No. DE 09-033)

19. Under RSA 369, it is clear that PSNH understands that it must seek authorization from the PUC before it may issue securities. Similarly, under RSA 362-F:9, I, PSNH must seek authorization from the PUC to enter into multi-year purchase agreements with renewable energy sources.

This Appeal Also Presents the Court with an Opportunity to Decide, Modify, or Clarify Issues of General Importance in the Administration of Justice.

20. In its Motion, PSNH contends that the Commission did not err in declining to rehear a matter based upon an alleged error in its factual finding where the finding was not central to the holding in the original Order.

21. As documented in the Appeal, the Commission's error is a patent and palpable misstatement of one of the positions taken by Appellant in the proceeding below. It is important to the administration of justice that a regulatory agency be obligated to correct an error of fact in an order or decision. See RSA 541-A:35 (a final decision shall include findings of fact and conclusions of law.) The PUC was obligated to do so in this case.

22. PSNH also contends that the Commission's Order fully complies with RSA 378:41. RSA 378:41 requires that:

“[a]ny proceeding before the commission initiated by a utility shall include, within the context of the hearing and decision, reference to conformity of the decision with the least cost integrated resource plan most recently filed and found adequate by the commission.”

23. PSNH's 2007 Least Cost Integrated Resource Plan was approved by the Commission Order No. 24,945 (February 27, 2009). There is no reference whatsoever in Order 24, 962 to PSNH's least cost integrated resource plan most recently filed and found adequate by the commission.

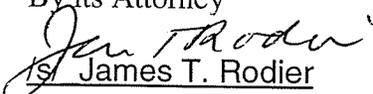
24. In its Motion, PSNH attempts to boot-strap the Commission's Order off of its own witness's testimony that “PSNH's Integrated Least Cost Resource Plan filed on September 30, 2007, discusses the need to enter into longer-term contracts with renewable facilities that produce REC's.” PSNH Memorandum at 15. This testimony was recently flatly contradicted by PSNH's statements to a renewable energy developer that “PSNH had many irons in the fire and that they had no interest right now, or in fact for many years to come, in renewable energy.”

Petition for Intervention of Concord Steam Corporation, DE-09-067, at ¶ 3. PSNH should not be allowed to rely on a now-discredited representation to the Commission. In any event, there is no mention of PSNH's least cost integrated resource plan most recently filed and found adequate by the commission in the Orders that have been appealed in this proceeding.

25. Moreover, PSNH appears to be oblivious to the irony of its contention that this is a "minor" issue. PSNH Memorandum at 3. At a minimum, PSNH, as it must, concedes that any PUC order issued in a proceeding initiated by a utility must comply with RSA 378:41 which was enacted in 1984. Since that time, there ostensibly have been hundreds of orders issued by the PUC which do not even mention, much less comply with, RSA 378:41. This would include PUC Order No. 24,997 (Approving Temporary Rates for PSNH) issued on July 31, 2009, well after this Appeal was taken. Accordingly, this Court has been presented with an extremely important and substantive issue of law.

WHEREFORE, Appellant respectfully requests this Honorable Court to deny PSNH's Motion for Summary Disposition, and to order such other and further relief as may be just and equitable.

Dated: August 21, 2009

Respectfully submitted,
FREEDOM PARTNERS, LLC
By its Attorney

/s/ James T. Rodier
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CERTIFICATION OF SERVICE

I have served copy of the foregoing Objection on each person identified on the attached service list for this proceeding.


/s/ James T. Rodier
James T. Rodier

SUPREME COURT DOCKET NO. 2009-0521

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