

**THE STATE OF NEW HAMPSHIRE**  
**BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

**Public Service Company of New Hampshire**

Docket No. 08-145

**Objection of Freedom Logistics, LLC and Halifax-American Energy Company, LLC to  
Public Service Company of New Hampshire's Motion to Strike**

Pursuant to N.H. Code Admin. Rule Puc 203.07, Freedom Logistics, LLC ("Freedom Energy") and Halifax-American Energy Company, LLC ("HAEC")(collectively, "Petitioners") hereby object to the Motion to Strike (the "Motion") filed by Public Service Company of New Hampshire ("PSNH"). In support, Petitioners state the following facts and law.

**I. Introduction**

In response to the Petition in this proceeding, PSNH acknowledged that it completed activities at Merrimack Station to increase its net power output without having first sought a public interest determination as required by RSA 369-B:3-a from the New Hampshire Public Utilities Commission (the "Commission"). Unable to provide a plausible legal theory that would excuse its contravention of RSA 369-B:3-a, PSNH's Motion instead attacks the Petitioners on procedural grounds. PSNH's contention that Petitioners Objection to PSNH's Motion to Dismiss (the "Objection") was not timely filed fails because Petitioners provided electronic copies of the Objection to the Commission, PSNH and all parties to the docket in accordance with the Commission's electronic filing procedures within the time limit set forth in the Commission's rules. In addition, PSNH's assertions relating to the status of HAEC, and its business relationship with South Jersey Energy Company, Inc. ("SJEC") have no bearing on HAEC's status as a proper party to this proceeding. PSNH's procedural maneuvering cannot obscure the fact that it acted in disregard of the requirements of RSA 369-B:3-a.

## **II. Petitioners' Objection to PSNH's Motion to Dismiss Was Filed Electronically and Timely Served on All Parties to the Proceeding**

The Motion seeks to strike the Objection without mention of the fact that PSNH, the Commission, Commission staff and the parties to this proceeding were provided with the Objection within the applicable time limit. The Objection was served in accordance with the Commission's electronic filing procedures within ten days of the filing of PSNH's Motion to Dismiss. PSNH filed its Motion to Dismiss on November 24, 2008. On December 4, 2008 at 3:09 pm, counsel for Petitioners electronically filed the Objection, including cover letter and exhibits, with the Commission, Commission staff, and the parties to this proceeding in accordance with Rule Puc 203.03. Attached as Exhibit 1 is a copy of the electronic mail by which the Objection was filed.

Denial of PSNH's Motion to Strike is also in the interests of justice and will not prejudice any party because the Petition raises fundamental statutory requirements that cannot be avoided by PSNH's procedural maneuvering in this proceeding. The Petition seeks a determination, pursuant to RSA 369-B:3-a, regarding whether certain modifications to Merrimack Station are in the public interest.

In responding to the Petition, PSNH acknowledged that it had already expended unspecified sums and completed unnamed projects to increase the net power output of Merrimack Station without first undergoing the required review by the Commission. PSNH Motion to Dismiss at 5-6. The Commission is vested with plenary authority over PSNH including the duty to be informed of and review relevant information prior to PSNH making capacity additions or modifications to its plants. RSA 369-B:3-a, RSA 374:4, RSA 374:5. By its Motion, PSNH seeks to further and improperly delay the Commission from undertaking its duty,

and PSNH's obligation to subject its projects to advance Commission review. Because these duties are so clearly embodied in the Commission's enabling legislation, no prejudice will result from denying PSNH's attempts to avoid the Commission's jurisdiction over whether the project to increase the net power output of Merrimack Station is in the public interest. It is highly likely that the issues raised by the Petition will continue to be brought before the Commission until PSNH fully discloses the relevant facts and the Commission renders a public interest determination regarding PSNH's apparently completed activities to increase the output of Merrimack Station.

### **III. HAEC is a Proper Party to This Proceeding**

Using incomplete information, the Motion seeks to strike portions of the Objection which provide certain details regarding HAEC's electricity supply business. However, PSNH's attempt to mischaracterize HAEC's business interests and relationship with SJEC generally support HAEC's standing in this proceeding.

As addressed in the Petition and in the Objection, HAEC is an electricity market participant in PSNH's service territory whose rights, duties and privileges will be adversely affected if PSNH is able to avoid the statutorily-mandated public interest review by the Commission of its project to increase the output of Merrimack Station. As is readily apparent from the exhibits to PSNH's Motion: 1) HAEC has a unique corporate identity (See, Certificate of Formation of Limited Liability Company, Motion at Exhibit 2); 2) maintains a business relationship with South Jersey Energy Company ("SJEC"), (See, letter dated November 1, 2007 from HAEC to SJEC, Motion at Exhibit 3); and, 3) is commercially engaged in the procurement and supply of electricity (See, Certificate of Formation of Limited Liability Company, Motion at Exhibit 2). As a clarification, Halifax American Operating Company is a trade name held by

HAEC, which HAEC has authorized SJEC to use as part of their mutual business arrangements relating to supply of electricity in the PSNH service territory. See, letter dated November 1, 2007 from HAEC to SJEC, Motion at Exhibit 3.<sup>1</sup>

Petitioners' prior filings provide additional details regarding the relevant business relationship between HAEC and SJEC. PSNH's efforts and assertions in support of its Motion amount to another attempt to divert the Commission's attention from the activities to increase the output of Merrimack Station undertaken by PSNH and to place additional obstacles between its actions and the required public interest review by the Commission.

## **VI. Conclusion**

For the reasons set forth above, the Commission should deny the Motion to Strike filed by PSNH.

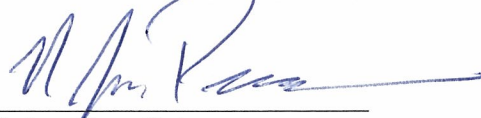
Dated: December 23, 2008

Respectfully submitted,

Freedom Logistics LLC  
Halifax-American Energy Company LLC

By their Attorney,

DOWNS RACHLIN MARTIN PLLC



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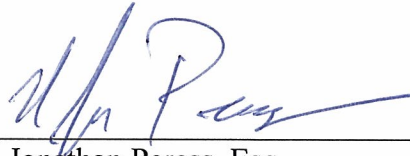
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<sup>1</sup> The Objection mistakenly stated that HAEC is a trade name held by SJEC. Petitioners apologize for any confusion this may have caused.

CERTIFICATE OF SERVICE

I certify that on this date I caused the attached Objection to PSNH's Motion to Strike to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

Dated: December 23, 2008

A handwritten signature in blue ink, appearing to read 'N. Jonathan Peress', is written over a horizontal line.

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Service List. Docket No. DE08-145

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## **Exhibit 1**

## Jonathan Peress

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**From:** Jonathan Peress  
**Sent:** Thursday, December 04, 2008 3:09 PM  
**To:** executive.director@puc.nh.gov  
**Cc:** bersara@psnh.com; desbiam@psnh.com; Meredith.A.Hatfield@oca.nh.gov; steve.mullen@puc.nh.gov; suzanne.amidon@puc.nh.gov; tom.frantz@puc.nh.gov; f.anne.ross@puc.nh.gov; Jonathan Peress  
**Subject:** RE: NHPUC Docket No. DE 08-145 -- Objection to PSNH Motion to Dismiss  
**Attachments:** SDOC1331.pdf; SDOC1332.pdf; SDOC1333.pdf



SDOC1331.pdf (69 KB)



SDOC1332.pdf (2 MB)



SDOC1333.pdf (4 MB)

In accordance with Rule Puc 203.11, attached please find an electronic version of the Objection of Freedom Logistics, LLC and Halifax-American Energy Company, LLC to PSNH's Motion to Dismiss (the "Objection") filed today in Docket No. DE 08-145. The three attached files respectively are the cover letter, the Objection, and the Exhibits to the Objection. njp

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