

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DE 09-180
2009 DEFAULT ENERGY SERVICE RATE CHANGE

MOTION TO COMPEL RESPONSE TO DATA REQUESTS NO. 1

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 No. 1 pursuant to Puc 203.09. In support of its Motion, Movants say the following:

1. In a Data Response dated November 12, 2009, PSNH objected to data request No. 1 propounded by Freedom Logistics, LLC and Halifax-American Energy Company, LLC on October 30, 2009:

Question: Does PSNH agree with the following statement: "Murray said PSNH rates are higher than market rates because the company locked into multi-year contracts to buy power to meet the 40 percent of customer demand it historically hasn't been able to satisfy with its own generation. Those contracts extend through 2010, he said."

Response: Whether PSNH agrees or disagrees with the quoted statement is irrelevant. The purpose of this docket is to establish a Default Energy Service rate for effect January 1, 2010. The Commission's decision in this docket should be based on information contained in PSNH's filing and in the record.

2. PSNH did not serve its objection within the 10 day period specified in Rule Puc 209 (f). Accordingly, PSNH has waived its right to object and must respond forthwith.

3. Data Request No. 1 simply asks PSNH for the purposes of developing the record in this proceeding whether or not it agrees a statement issued by its spokesperson to the press on a central issue in this proceeding. According to the statement, the above-market costs to be addressed by the Commission in this proceeding are due to an above-market purchase of power by PSNH. If this is true, then the migration away from default service which PSNH laments has been caused by its own actions which may not have been prudent. The issue which PSNH has raised in this proceeding regarding the purported revenue shift from large to small customers may become moot if this purchase is disallowed in whole or in part.

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 not made a good-faith effort to resolve the dispute informally because it would be futile.

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 No. 1 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 13, 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