

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2011-0348

Appeal of  
Bridgewater Power Company, L.P., Pinetree Power, Inc.  
Pinetree Power-Tamworth, Inc., Springfield Power, LLC,  
DG Whitefield, LLC d/b/a Whitefield Power & Light Company, and  
Indeck Energy-Alexandria, LLC

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On Appeal by Petition under RSA 541  
from Orders of the  
New Hampshire Public Utilities Commission

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**REPLY OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
TO APPELLANTS' OBJECTION TO PSNH'S MOTION FOR SUMMARY DISMISSAL**

Defendant-Appellee Public Service Company of New Hampshire ("PSNH") files this brief Reply to the Objection of Appellants Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power, LLC, DG Whitefield, LLC d/b/a Whitefield Power & Light Company, and Indeck Energy-Alexandria, LLC (the "Appellants") to PSNH's Motion for Summary Dismissal in order to address one issue raised in the Objection.

After intervening in a proceeding at the Public Utilities Commission in order to block competition and then filing two separate appeals with this Court – the second during ongoing settlement negotiations – Appellants now accuse PSNH of acting in bad faith in those negotiations because it responded to these appeals under the provisions of Rule 25 of this Court. The Appellants' claims are inappropriate, unfair, and inaccurate.

Appellants are correct that negotiations to resolve many issues (including the issues raised in this appeal) were taking place and that a number of parties, including the Governor, were involved in those negotiations. Indeed, as noted by the Appellants, those negotiations were ongoing “for months,” but without resolution. Appellants’ decision to bring those settlement discussions before this Court may ultimately doom any such resolution to failure.

Just as the Appellants deemed it necessary to file their second appeal (July 22) during the pendency of settlement negotiations to meet deadlines imposed by statute and Court rules, Appellee PSNH made its filing in a manner to timely comply with this Court’s rules. Just as it would have been inappropriate for PSNH to impugn Appellants’ motives for filing the appeal during negotiations, it is inappropriate for Appellants to do so because PSNH responded to those appeals. It is also inappropriate for the Appellants to raise the issue of these settlement discussions at all, or to suggest that particular issues had or had not been resolved.

Likewise, it is unfair to claim bad faith conduct in the negotiations without opening up the entire settlement process to the Court’s scrutiny and review. Appellants are correct that settlement is to be favored. But unless and until settlement is reached, neither party should be forced to waive its rights in litigation, nor should either party be permitted to use the existence of negotiations in an effort to divert attention from the substantive issues before the Court.

Finally, Appellants’ claim that there was no need for PSNH to seek summary dismissal now, and that this appeal could simply have awaited a normal briefing and argument schedule, is inaccurate. As shown in the attached Affidavit of Richard M. Cyr, Senior Vice President of Cate Street Capital, the management company for the Berlin Project, a normal briefing schedule may doom the Project. See also Intervenor City of Berlin’s Motion for Expedited Treatment of

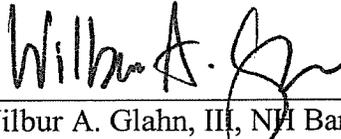
Court's Review of Petitioners' Discretionary Appeal and Expedited Review of Motion for Summary Dismissal, August 1, 2011, ¶ 7.

Appellants chose to file their appeals. PSNH had the right to respond by challenging their standing to proceed in this Court, just as it previously challenged that standing at the PUC. PSNH submits that the Court should address its Motion for Summary Dismissal based on the substantive arguments without regard to extraneous issues raised by Appellants and that are unsupported by the record on appeal.

PUBLIC SERVICE COMPANY  
OF NEW HAMPSHIRE

By its attorneys,  
McLANE, GRAF, RAULERSON & MIDDLETON,  
PROFESSIONAL ASSOCIATION

Date: August 12, 2011

By:   
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**Certificate of Service**

I hereby certify that on August 12, 2011, I served the foregoing Reply by mailing two copies thereof by first class mail, postage prepaid, to each of those counsel listed on the attached Service List.

  
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Wilbur A. Glahn, III