

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 08-077

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

**Petition for Approval of a Power Purchase Agreement and a Renewable Energy Certificate
Option Agreement with Lempster Wind, LLC**

Order Granting Petition

ORDER NO. 24,965

May 1, 2009

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; James Rodier, Esq. on behalf of Freedom Partners, LLC; Meredith A. Hatfield, Esq., Office of Consumer Advocate, on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Staff.

I. PROCEDURAL HISTORY

On May 29, 2008, Public Service Company of New Hampshire (PSNH) filed a petition requesting approval of a power purchase agreement and a renewable energy certificate (REC) option agreement with Lempster Wind, LLC (Lempster Wind) pursuant to RSA 362-F:9. With its petition, PSNH filed the supporting testimony and related exhibits of S. B. Wicker, Jr., a Principal Engineer with PSNH, along with a motion for confidential treatment of certain information contained in the power purchase agreement and REC option agreement related to the pricing of energy, capacity and RECs. On August 20, 2008, PSNH filed a copy of a power purchase agreement between PSNH and the New Hampshire Electric Cooperative (NHEC) providing for the sale to NHEC of a portion of the energy, capacity and RECs that PSNH purchases from Lempster Wind.

On June 5, 2008, the Commission issued an order of notice scheduling a prehearing conference for June 27, 2008. The Office of Consumer Advocate (OCA) filed a letter on June 11, 2008 stating that it would be participating in the docket on behalf of residential ratepayers pursuant to RSA 363:28. Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (Constellation) filed a joint petition to intervene on June 19, 2008. On June 24, 2008, Lempster Wind entered a limited appearance for purposes of monitoring the proceeding. Freedom Partners, LLC (Freedom) filed a motion to intervene on June 25, 2008.

On June 23, 2008, Constellation filed an objection to PSNH's motion for confidential treatment. At the prehearing conference, the Commission granted PSNH's motion. In addition, the Commission granted Constellation's motion to intervene with the condition that Constellation not be provided access to the confidential information contained in the filing. The Commission also granted Freedom's motion to intervene on a limited basis consistent with Freedom's agreement with PSNH not to seek access to confidential information. Following the prehearing conference, Staff submitted a proposed procedural schedule, which the Commission approved by a secretarial letter issued on July 8, 2008.

On August 5, 2008, Constellation filed a motion to compel PSNH to respond to certain of Constellation's data requests. Further filings, motions and objections were made by PSNH, Lempster Wind and Constellation, all of which were addressed in Order No. 24,895 (September 17, 2008).

Constellation filed the direct testimony of Daniel W. Allegretti, Vice President and Director of Wholesale Energy Policy for Constellation Energy Resources, LLC, on October 1, 2008. Steven E. Mullen, Assistant Director of the Commission's Electric Division, filed both a confidential and a public version of Staff testimony on the same day. Discovery ensued on

Constellation's and Staff's testimony which resulted in PSNH filing a motion on November 6, 2008 requesting the Commission to compel Constellation to respond to certain of PSNH's data requests. PSNH filed rebuttal testimony on November 7, 2008.

Constellation filed an objection to PSNH's motion to compel on November 11, 2008 and, on November 25, filed a motion to substitute witnesses by replacing Daniel W. Allegretti with Thomas E. Bessette and Bruce McLeish. In Order No. 24,918 (December 5, 2008), the Commission granted in part and denied in part PSNH's motion to compel, granted Constellation's motion to substitute witnesses, and postponed the originally scheduled December 9, 2008 hearing.

By secretarial letter dated January 14, 2009, the Commission rescheduled the hearing to February 5, 2009. On January 23, 2009, Constellation filed a motion for protective order and confidential treatment for the information it provided in accordance with Order No. 24,918 and, on the same day, notified the Commission that Constellation had decided to withdraw from participation in the proceeding. Freedom filed a partial objection to Constellation's motion for protective order and confidential treatment which the Commission denied by secretarial letter dated February 4, 2009. The hearing took place on February 5, 2009. On February 13, 2009, Freedom filed its closing statement and, on February 17, 2009, PSNH filed its response.

II. POSITIONS OF THE PARTIES AND STAFF

A. PSNH

PSNH filed its petition for approval of a 15-year power purchase agreement and a 15-year REC option agreement between PSNH and Lempster Wind pursuant to RSA 362-F:9, which provides in part:

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.

In prefiled testimony, PSNH stated that Lempster Wind is a wholly-owned subsidiary of Iberdrola Renewable Energies, USA, Ltd. which, in turn, is a wholly-owned subsidiary of Iberdrola Renovables, S.A. PSNH explained that the Lempster Wind project is located on Lempster Mountain in Lempster, New Hampshire and will consist of 12 Gamesa G87 wind turbines. Each turbine will be mounted on a 256-foot tower and will have a nameplate rating of 2.0 megawatts (MW) for a total project output of 24 MW. According to PSNH, the estimated capacity factor for the project is 33 percent, and the project is expected to produce approximately 70,000 megawatt-hours (MWH) per year, along with a corresponding number of New Hampshire Class I RECs.

PSNH explained that the power purchase agreement between PSNH and Lempster Wind governs the purchase by PSNH of energy, capacity and New Hampshire RECs produced by Lempster Wind. The REC option agreement governs the rights and obligations of Lempster Wind in repurchasing certain New Hampshire Class I RECs from PSNH over the term of both agreements. PSNH stated that it had also entered into an interconnection agreement with Lempster Wind regarding the terms and conditions of Lempster Wind's interconnection with PSNH's electric distribution system. PSNH noted that the interconnection agreement does not require Commission approval but was filed for informational purposes.

As described by PSNH, the project will interconnect with PSNH's electrical distribution system through approximately 10.5 miles of dedicated 34.5 kilovolt (kV) line extending from the project site in Lempster to PSNH's substation located in Newport. PSNH will solely own this

dedicated circuit, which will be built on top of an existing, rebuilt distribution circuit. According to PSNH, the existing, rebuilt distribution circuit in Newport and Goshen will continue to be owned by PSNH and will serve its customers. PSNH also serves approximately a dozen customers along Route 10 in Lempster near the Goshen town line, while the remaining existing distribution circuit in Lempster is owned by and serves NHEC's customers. NHEC will continue to own, and PSNH and NHEC will jointly operate and maintain, the portion of the existing, rebuilt distribution line in NHEC's service territory under an agreement for the joint use of pole structures between PSNH and the NHEC. PSNH supplied a copy of this agreement with its filing but noted that the agreement did not require Commission approval. PSNH testified that Lempster Wind will pay for the necessary distribution system improvements.

PSNH testified that it had separately filed for permission to serve Lempster Wind as a customer even though the Lempster Wind project is located in NHEC's franchise area. According to PSNH, when the wind is not blowing and the turbines are not spinning, Lempster Wind requires an electric current at an appropriate voltage to run the electronics and, in the winter, heat some components of the turbines. While NHEC cannot supply electric service at the appropriate voltage, PSNH can supply the power over its 34.5 kV line. According to PSNH, its petition to serve Lempster Wind, if approved, would allow PSNH to serve Lempster Wind for those periods of time when additional voltage is required.¹ Otherwise, NHEC would serve Lempster Wind's retail electric service needs such as maintenance and lighting.

In its testimony, PSNH indicated that PSNH and NHEC were in the process of drafting a resale agreement under which PSNH agreed to resell to NHEC 10 percent of the energy, capacity and RECs procured from Lempster Wind. At hearing, PSNH noted that the agreement between

¹ PSNH filed the petition to serve Lempster Wind on October 29, 2008 in Docket No. DE 08-139. The Commission approved the petition in Order No. 24,933 (January 16, 2009).

PSNH and NHEC was finalized and filed in the instant docket on August 20, 2008, for informational purposes. Because the agreement is a wholesale power contract, it is subject to the jurisdiction of the Federal Energy Regulatory Commission and does not require Commission approval.

PSNH testified that ISO New England Inc. (ISO-NE) had approved the electrical interconnection for the Lempster Wind project. Also, the New Hampshire Site Evaluation Committee issued a Certificate of Site and Facility for the project in June 2007. According to PSNH, Lempster Wind informed PSNH that all other permits and approvals for construction and operation of the Lempster Wind project have been received.

In its prefiled testimony, PSNH said that it expected the electrical interconnection with Lempster Wind to be completed in August 2008 with all of the wind turbines on line and the project to be in full commercial operation in September. At hearing, PSNH said that it started purchasing power from the Lempster Wind project on October 21, 2008, and that the project began commercial operation on November 10, 2008. Further, the project was accepted into ISO-NE for capacity purposes on December 1, 2008. PSNH also stated that it had purchased RECs from Lempster Wind on a monthly basis since the facility began operation.

PSNH said it planned to use the energy and capacity purchased under the agreements to satisfy its default service energy obligation, and that forecasted costs for such purchases will be included in PSNH's default service rate with actual costs being reconciled on an annual basis. Regarding the RECs, PSNH said REC purchases under these agreements will be used to comply with applicable New Hampshire renewable portfolio standards (RPS). PSNH noted that the costs of the New Hampshire RECs will also be included in PSNH's energy service rate, so those REC costs will be forecasted and reconciled in the same manner as energy costs.

According to PSNH, it negotiated with Lempster Wind a price term for energy that is calculated as a percentage of the ISO-NE energy price, subject to a \$/MWh floor.² PSNH explained that the ISO-NE energy price is the hourly real-time ISO-NE locational marginal price (LMP) at the North Road node (ID #4394) in the New Hampshire load zone of the ISO-NE market. PSNH said it will calculate the average energy price paid to Lempster Wind on a monthly basis and, if the average energy price is less than the energy floor price, an adjustment to the amount paid for energy for that month will be made so that the average energy price paid is equal to the floor price. Regarding capacity, PSNH noted that it would pay Lempster Wind a certain percentage of the amount PSNH is credited in connection with Lempster Wind's capacity in PSNH's ISO-NE settlement account.

With respect to the purchase of RECs, PSNH stated that the agreement provides that it will pay Lempster Wind a fixed dollar amount for each REC, with the amount differing for project years 1-5, 6-10 and 11-15. PSNH said it will purchase RECs produced by Lempster Wind subject to the REC option agreement. Under the REC option agreement, Lempster Wind may repurchase RECs from PSNH, up to a fixed quantity, over the term of the agreement. According to PSNH, Lempster Wind would probably exercise this option if it could sell RECs into other states' RPS programs or the voluntary "green" market for a higher price than the purchase prices contained in the REC option agreement. In exchange for exercising this option, Lempster Wind would pay PSNH a premium per repurchased REC. PSNH said it would use the premium to offset the costs of replacement RECs or, if none were available in the market, the expense of alternative compliance payments (ACPs). PSNH testified that the RECs it purchases from Lempster Wind will help satisfy PSNH's Class I REC requirements.

² The Commission granted confidential treatment to the pricing terms for energy, capacity and RECs as well as certain terms of the REC option agreement during the June 27, 2008 prehearing conference.

In response to questions at hearing, PSNH stated that if the Commission did not approve the agreements the Company would record the project costs “below the line,” meaning that the costs of the agreements would not be included in rates and the energy, capacity and RECs could not be used for the benefit of PSNH’s customers.

Addressing the legal standards set forth in RSA 362-F:9, PSNH said that the agreements will provide energy and capacity for its customers based on market prices, lower PSNH’s future cost of purchased power, and add a new source of renewable generation to help PSNH meet its REC requirements while also further diversifying PSNH’s mix of resources. In addition, PSNH said that the agreements are market-driven competitive solutions to PSNH’s need for renewable energy and are administratively efficient as they will serve as a model for future negotiations. Further, PSNH stated that the agreements will provide economic development and environmental benefits to New Hampshire as they provide the necessary support for development of the wind project while also reducing PSNH’s reliance on fossil fuel-based market purchases. Accordingly, PSNH concluded that the approval of the agreements is in the public interest and satisfies the requirements of RSA 362-F:9.

On February 19, 2009, PSNH filed reply comments to those filed by Freedom following the hearing. PSNH stated that, contrary to Freedom’s assertion, RSA 362-F:9 clearly authorizes utilities to enter into long-term agreements to purchase energy and/or RECs. PSNH said its agreements with Lempster Wind need not be pre-approved but must be submitted to and approved by the Commission to allow PSNH to recover the costs of the agreements. In further response to Freedom’s written statement, PSNH said that Freedom offered no support for its contention that PSNH’s customers are likely to pay higher bills if the Commission approves the agreements with Lempster Wind. PSNH also asserted its rights to acquire RECs in amounts it

believes are necessary for PSNH's reasonably projected RPS requirements, and its right to sell those RECs for the benefit of its retail customers in the event that its REC acquisitions exceed its RPS requirements. Finally, PSNH said that it does not use a "litmus test" regarding preconditions for interconnection with its electrical system related to the sale of capacity, energy and RECs.

B. Constellation

In prefiled testimony, Constellation claimed that PSNH should use a request for proposal (RFP) process to procure RECs because only an RFP process would result in the acquisition of RECs at the least cost to customers. According to Constellation, absent an RFP process, there was also no basis to determine whether the prices PSNH agreed to pay for RECs produced by Lempster Wind are market based. Constellation also expressed concern about what effect PSNH's long-term agreement to energy costs and the uncertainty of the forward costs of energy would have on PSNH's ratepayers if the Commission approved the agreements. Before the hearing, Constellation withdrew from the docket and its testimony was not introduced into the hearing record.

C. Freedom Partners

At the hearing, Freedom Partners questioned whether PSNH intended to sell the RECs acquired from Lempster Wind in other states' renewable markets rather than use them for NH RPS compliance. In response, PSNH's witness stated that PSNH would try to maximize the value of the RECs either by using them to satisfy NH RPS requirements or by selling them in other available markets.

Freedom Partners also asked whether the output from Lempster Wind has to be transmitted under one of PSNH's open access tariffs to the NEPOOL pooled transmission

facilities (PTF). PSNH replied that it takes delivery of the power at the site of the facility so PTF tariff requirements do not apply. PSNH further said that while there is a nodal LMP at the Newport substation, that price is within percentage points of the New Hampshire LMP. Freedom Partners also inquired whether PSNH would apply the same concepts followed in the Lempster Wind agreements to other renewable generation facilities. PSNH replied that while it has developed certain ways of dealing with the purchase of energy, capacity and RECs that meet its needs as well as a project's needs, every deal is different and open to negotiation.

Subsequent to the hearing, on February 13, 2009, Freedom Partners filed a statement with the Commission expressing the following opinions: 1) PSNH has no authority to enter into the contracts absent Commission approval; 2) RECs purchased by PSNH from Lempster Wind can only be used to meet New Hampshire RPS requirements; 3) if approved, the Lempster Wind agreements would result in PSNH customers paying "higher bills;" 4) the disparity in treatment of transmission costs is an impediment to renewable resource providers entering into an agreement with any entity other than PSNH; and 5) PSNH should not use a "litmus test" but treat every renewable developer objectively.

D. Office of Consumer Advocate

At hearing, the OCA asked PSNH how many RECs it would need for 2009. PSNH responded that it would need 43,000 Class I RECs. The OCA noted that the Lempster Wind project is expected to produce 70,000 RECs annually, with NHEC entitled to 7,000 RECs, leaving approximately 63,000 RECs for PSNH. The OCA also pointed out that other generation units owned by the Company are eligible to produce Class I RECs, so PSNH could end up with Class I RECs in excess of the amount needed for NH RPS compliance in future years. PSNH stated that, to maximize the value of the RECs, it could bank the RECs for use in future years or

possibly sell them to other entities. In further response to the OCA, PSNH said that if Lempster Wind exercised its option to buy back RECs, PSNH would receive a premium that would partially offset the costs of purchasing RECs on the market or making the ACPs under the RPS law. The OCA inquired as to PSNH's position regarding the use of RFPs to procure RECs. The Company responded that the market for new projects is very limited at present. PSNH further offered that an RFP process would be appropriate if there were a number of renewable projects that can supply RECs. The OCA concluded by stating that it deferred to the Staff regarding whether the Commission should approve the proposed agreements between PSNH and Lempster Wind.

E. Staff

Mr. Mullen testified that he reviewed the agreements to determine whether they are in the public interest in accordance with RSA 362-F:9. In his prefiled testimony, Mr. Mullen recited the factors set forth in RSA 362-F:9, II that the Commission must consider in determining the public interest and drew particular attention to the following wording at the beginning of that subsection:

“In determining the public interest, the commission shall find that the proposal is, on balance, substantially consistent with the following factors. . .”

Mr. Mullen testified that he interpreted the words “on balance, substantially consistent with” as requiring the Commission to look at the terms and conditions of the PSNH/Lempster Wind power purchase and REC option agreements as an entire package in determining whether the multi-year proposals are in the public interest. In addition, Mr. Mullen said he read the words “substantially consistent” as allowing varying degrees of consistency with the required factors provided that the proposed agreements are in overall conformance with the required factors.

In reviewing the applicable restructuring policy principles contained in RSA 374-F:3, Mr. Mullen determined that four are relevant to the review of the agreements in the instant docket: 1) system reliability (RSA 374-F:3, I); 2) universal service (RSA 374-F:3, V); 3) environmental improvement (RSA 374-F:3, VIII); and 4) renewable energy resources (RSA 374-F:3, IX). Mr. Mullen concluded that the proposed agreements satisfy each of these principles. First, Mr. Mullen stated that the addition of a new generating source to the regional electric grid should enhance the reliability of the regional electric system, although he acknowledged that the reliability of the system would not be enhanced as much by a wind facility as it would by a baseload facility operating at times of system peaks. Second, the Lempster Wind project supports the goal of increasing commitments to renewable energy resources while also providing additional generation with no new increases in air pollution. Finally, according to Mr. Mullen, the pricing terms in the proposed agreements should mitigate price volatility while not creating any new deferred costs. Mr. Mullen also opined that the agreements are consistent with the principles of New Hampshire's energy policy, RSA 378:37, in that the agreements with Lempster Wind provide fuel source diversity to PSNH's supply portfolio using a renewable generation source that has no harmful emissions associated with its operation. Also, Mr. Mullen expressed his opinion that the agreements contained reasonable pricing terms for energy, capacity and RECs that will help PSNH and its customers avoid future purchases at uncertain pricing terms.

Mr. Mullen examined the demand and available supply of Class I RECs. He noted that, for 2009, providers of electricity in New Hampshire will need to collectively purchase 61,425 Class I RECs – an amount representing 0.5% of the total megawatt-hours of electricity supplied. As for availability of RECs, Mr. Mullen listed other facilities the Commission has approved for

the production of New Hampshire Class I RECs but he cautioned that Class I RECs from those facilities may or may not be available for purchase by New Hampshire electric providers if those facilities are also certified in other states having RPS requirements. In such cases, NH Class I facilities may choose to sell their RECs in those states' renewable markets.

Mr. Mullen compared the price of the RECs in the agreement between PSNH and Lempster Wind to the estimated 2009 Class I ACP price and commented on how changing supply and demand conditions could impact REC market prices. He explained that in the event of an over-abundance of Class I RECs available in the market, the market price could fall below the REC prices in the agreements. However, he pointed out that the available supply depends on a number of factors, including future development of renewable energy resources, whether NH Class I resources also qualify for RECs in other states, the maturity of the RPS programs in New Hampshire and other states and the eligibility of sources in control areas adjacent to the New England control area.

Addressing the REC option agreement, Mr. Mullen noted that the agreement gives Lempster Wind the option of buying back a certain number of RECs during the first 10 years of the contract. If Lempster Wind opts to repurchase RECs, it will be required to pay PSNH the original purchase price plus a premium per REC. Mr. Mullen said that PSNH could use the premium payment to offset its costs of fully satisfying its Class I REC requirements. Mr. Mullen testified that the Commission approved a similar provision in Docket No. DE 07-125, *Public Service Company of New Hampshire*, Order No. 24,839 (April 4, 2008).³

³ In Docket No. DE 07-125, the Commission approved agreements between PSNH and Pinetree Power, Inc. and Pinetree Power-Tamworth (Pinetree) which included a provision that allowed Pinetree to sell its Class III RECs to parties other than PSNH. Similar to the instant arrangement, if Pinetree chose to sell RECs to parties other than PSNH, Pinetree would have to pay PSNH a premium per REC.

Mr. Mullen described the energy pricing terms of the power purchase agreement as the greater of a percentage of the hourly real-time ISO-NE LMP at the local node in the NH load zone or a floor price that is fixed for the 15-year term of the agreement. He noted that the pricing for energy followed the market price of power. He explained that since the energy price is a percentage of the NH nodal price, the “trigger point” for the average monthly NH nodal price is actually higher than the floor price. Mr. Mullen stated that in the event that the floor price became operative (i.e., the floor price exceeded the prevailing market price for energy), the excess costs would be part of PSNH’s costs of providing energy service to its customers.

Regarding the possibility that the energy prices paid by PSNH to Lempster Wind could be above market, Mr. Mullen explained that there would have to be a number of other developments in the market for that to happen. Considering the upward trend of energy prices at the time he filed his testimony, Mr. Mullen expressed the view that it was possible, but highly unlikely, that at some point in time the energy floor price could be above market. At hearing, in response to a question about lower energy prices that had recently been experienced, Mr. Mullen stated that nothing had occurred that had changed his recommendation to approve the contracts.

Mr. Mullen said the provisions in the power purchase agreement regarding the pricing of capacity are similar to the provisions governing the pricing of energy in that the price will vary as market conditions change. In any event, PSNH will pay Lempster Wind for capacity priced at a discount from the prevailing market prices.

Because the legislature allowed use of multi-year contracts for the acquisition of RECs, Mr. Mullen said PSNH should be able to recover the prudently incurred costs associated with the agreements. He also stated his view that nothing in the proposed agreements fit the definition of stranded costs pursuant to RSA 374-F:2.

Finally, Mr. Mullen found it reasonable that NHEC be able to purchase from PSNH 10% of the RECs, energy and capacity produced by Lempster Wind at the same price that PSNH paid to Lempster. According to Mr. Mullen, given that Lempster Wind is located in NHEC's service territory, cooperation between NHEC and PSNH, including sharing the output of the facility, was important in the effort to assist Lempster Wind in attaining commercial operation. In conclusion, Mr. Mullen recommended that the Commission approve the agreements.

III. COMMISSION ANALYSIS

With the enactment of RSA 362-F, the Legislature created new obligations for providers of electricity to obtain and retire renewable energy certificates from various renewable energy sources in amounts representing certain percentages of each supplier's total megawatt-hours of electricity provided to its customers in a given year. The agreements at issue in this proceeding are part of PSNH's efforts to meet the Class I percentage requirements set forth in RSA 362-F:3 through the use of purchased power agreements in accordance with RSA 362-F:9. Pursuant to RSA 362-F:3, PSNH is required to acquire RECs from qualifying Class I sources, i.e., new renewable electric generation facilities as defined in RSA 362-F:4, I, in an amount equal to 0.5% of the total megawatt hours of electricity it supplies to its customers during 2009. PSNH's obligation to acquire Class I RECs increases to 1.0% of the electricity it supplies to its customers in 2010, and by 1.0% per year thereafter until 2025.

PSNH entered into a 15-year power purchase agreement and REC option agreement with Lempster Wind under which PSNH commits to purchase RECs, energy and capacity from Lempster Wind while also providing Lempster Wind the option to repurchase certain amounts of RECs over the term of the agreements. RSA 362-F:9, I allows us to authorize electric distribution companies to enter into such multi-year REC purchase agreements "in conjunction

with or independent of purchased power agreements” so long as we find the contracts to be in the public interest.

RSA 362-F:9, II sets forth certain factors we must consider in assessing whether the REC purchase and related purchased power proposals contained in the agreements are in the public interest:

“In determining the public interest, the commission shall find that the proposal is, on balance, substantially consistent with the following factors:

(a) The efficient and cost-effective realization of the purposes and goals of this chapter;

(b) The restructuring policy principles of RSA 374-F:3;

(c) The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost resource plan pursuant to RSA 378:37-41, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers;

(d) The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions; and

(e) Economic development and environmental benefits for New Hampshire.”

As Staff highlights in its testimony, RSA 362-F:9, II requires the Commission to find that the proposal is, on balance, substantially consistent with the above factors. Accordingly, we must consider both the purchased power agreement and the REC option agreement in determining whether the proposed agreements are in the public interest. We have considered those factors along with the evidence in the record and conclude that approval of the purchased power agreement and the REC option agreement is in the public interest.

The Lempster Wind project is a new, renewable generating source that introduces no new pollution or harmful emissions into the environment. These agreements support the financial viability of the project and, therefore, are consistent with the environmental principles of the

electric utility restructuring statutes (RSA 374-F:3, VIII and IX) and New Hampshire's energy policy set forth in RSA 378:37.

In addition, we find the pricing terms for energy and capacity and RECs to be reasonable. Energy and capacity pricing in the power purchase agreement are both established by reference to actual prices experienced in the ISO-NE market, therefore allowing PSNH to pay energy and capacity prices that align with movements of market prices. Regarding the energy floor price, we find that the inclusion of this pricing term, while providing income protection to Lempster Wind, does so at a price level that is significantly discounted from current market energy prices. We agree with Staff that if market prices were to decline to the level of the floor price or below, then many other positive developments from a pricing perspective, such as decreases in fuel costs, would likely also be occurring.

Considering the number of variables in the continually developing REC market in New Hampshire and other states, it is difficult to predict future REC market prices. Nonetheless, given the REC prices in the power purchase agreement and the potential future movement of those agreed-upon prices, we find the REC pricing terms to be a cost-effective means for PSNH to meet some of its RPS compliance requirements. The REC option agreement, which allows Lempster Wind to repurchase a certain number of RECs upon payment of a premium to PSNH, affords an opportunity for Lempster Wind to potentially obtain a higher value for its RECs while also affording PSNH and its customers some mitigation of RPS compliance costs by requiring Lempster Wind to pay PSNH a premium for the RECs that are reacquired.

We agree with Staff that the reason the statute requires our approval of these multi-year agreements is to allow the petitioning utility to recover the prudently incurred costs of such agreements in its energy service rates. If PSNH had intended to use the agreements "below the

line,” the Company would not have had to seek the Commission’s approval. Therefore, we disagree that PSNH was required to seek approval from the Commission before it could enter into the subject agreements. If for some reason we were to find that the contracts were not in the public interest, PSNH would still be bound by the contracts, but would not be allowed to recover the associated costs from its customers.

We disagree with Freedom’s assertion that PSNH can only use the Class I RECs acquired through its agreement with Lempster Wind for compliance with its New Hampshire RPS requirements. At hearing, PSNH testified that it intended to maximize the value of RECs for the benefit of its customers. Although the statute does provide that multi-year agreements should be used to meet “reasonably projected renewable portfolio requirements,” RSA 362-F:9, I, there is nothing in RSA 362-F that bars a company from selling excess RECs procured through such agreements. Therefore, we find no legal barrier to PSNH selling the RECs it procures from Lempster Wind so long as the sale is consistent with the rules and process used in the trading of RECs in the NEPOOL market. Nevertheless, whether PSNH uses the RECs for compliance with New Hampshire’s RPS law, or sells them to try to achieve greater value, we will review PSNH’s actions as part of our annual review of its energy service revenues and costs.

In addition, Freedom’s bare assertion that PSNH customers will pay “higher bills” as a result of these agreements is not supported by the evidence. Finally, we do not find that PSNH’s interest in keeping pricing terms confidential implies that it will be applying a “litmus test” or somehow acting unfairly in negotiating REC purchase agreements.

It has been proposed in this proceeding that PSNH must issue an RFP to obtain the best market prices for RECs. While we agree that an RFP is one method to acquire RECs, the Legislature did not specify a particular solicitation method for distribution companies such as

PSNH to enter into multi-year purchase agreements with renewable energy sources for certificates. Rather, the statute provides that we consider “(d) The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market driven competitive innovations and solutions; and (e) Economic development and environmental benefits for New Hampshire.” RSA 362-F:9, II (d)-(e).

It is important to recognize that the REC market in New Hampshire is still developing. If the REC market develops to a point where there is an adequate supply of New Hampshire Class I RECs, using an RFP to procure RECs may indeed result in the lowest cost per REC. At present, however, there is a limited supply of Class I RECs and, based on the foregoing, we find that the two multi-year agreements regarding power, capacity and RECs between PSNH and Lempster Wind are consistent with the factors set forth in RSA 362-F:9, II and are in the public interest. In light of the above, we will approve the agreements between PSNH and Lempster Wind.

Based upon the foregoing, it is hereby

ORDERED, the Power Purchase Agreement and Renewable Energy Certificate Option Agreement between Public Service Company of New Hampshire and Lempster Wind, LLC are hereby APPROVED, and it is;

FURTHER ORDERED that the motion for confidential treatment filed on January 23, 2009 by Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. is hereby GRANTED.

By order of the Public Utilities Commission of New Hampshire this first day of May,
2009.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director