

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

2009 TERM

APPEAL OF FREEDOM PARTNERS, LLC

Appeal from Administrative Agency Under Rule 10

Docket No. 2009-0521

**APPELLEE'S APPENDIX TO ITS
MEMORANDUM OF LAW IN SUPPORT OF SUMMARY DISPOSITION**

This Appendix to Public Service Company of New Hampshire's Memorandum of Law is submitted in support of its Motion for Summary Disposition pursuant to Supreme Court Rules 10(1), 25(2), and 25(3).

Public Service Company of New Hampshire, Appellee

Gerald M. Eaton
Bar No. 0727
Senior Counsel
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(603) 634-2961

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STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

PETITION FOR APPROVAL OF POWER PURCHASE AGREEMENT
AND RENEWABLE ENERGY CERTIFICATE OPTION AGREEMENT
BETWEEN PSNH AND LEMPSTER WIND, LLC

DE 08-077

PETITION FOR INTERVENTION

NOW COMES Freedom Partners, LLC d/b/a Freedom Energy and hereby petitions the New Hampshire Public Utilities Commission for intervention in the above-captioned proceeding pursuant to RSA 541-A:32 and NH Code Admin. Rule Puc 203.17. In support of its Petition for Intervention, Petitioner says the following:

1. Freedom Partners, LLC, inter alia, is a retail broker of Renewable Energy Certificates (REC's) and Verified Greenhouse Gas Emission Reductions (VERs);

2. On May 29, 2008, Public Service Company of New Hampshire (PSNH) filed a petition for approval of a Power Purchase Agreement (PPA) and Renewable Energy Certificate (REC) Option Agreement (collectively, the Agreements) between PSNH and Lempster Wind, LLC (Lempster Wind). Pursuant to the terms of the Agreements, PSNH will purchase 100% of the energy, capacity and NH RECs from Lempster Wind, with Lempster Wind having the option to repurchase a certain percentage of the RECs from PSNH at a price that includes a premium above the price originally paid by PSNH.

3. As a retail broker of Renewable Energy Certificates (REC's) and Verified Greenhouse Gas Emission Reductions (VERs), Freedom Partners, LLC has rights, duties, privileges, immunities and other substantial interests which may be affected by this proceeding.

WHEREFORE, Freedom Partners, LLC hereby respectfully requests the Commission to grant it party intervener party status and to order such other and further relief as may be just and equitable.

Respectfully submitted,
FREEDOM PARTNERS, LLC
By its Attorney

/s/ James T. Rodier

1500A Lafayette Road, No. 112
Portsmouth, NH 03801-5918
603-559-9987

Dated: June 23, 2008

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Certification of Service

I have served copy of this petition on PSNH and the Office of the Consumer Advocate.

/s/ James T. Rodier

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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

June 27, 2008 - 10:12 a.m.
Concord, New Hampshire

RE: DE 08-077
PUBLIC SERVICE OF NEW HAMPSHIRE:
Petition for Approval of a Power
Purchase Agreement and Renewable
Energy Certificate Option Agreement
with Lempster Wind. (Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Graham J. Morrison
Commissioner Clifton C. Below

Jennifer Ducharme, Clerk

APPEARANCES: **Reptg. Public Service of New Hampshire:**
Gerald M. Eaton, Esq.

Reptg. Constellation NewEnergy and
Constellation Energy Commodities Group:
Thomas Bessette, Esq.

Reptg. Lempster Wind, L.L.C.:
Susan S. Geiger, Esq. (Orr & Reno)

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Kenneth E. Traum, Asst. Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:
Suzanne G. Amidon, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

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1 the Commission with an agreement for purchased power from
2 Lempster Wind and Renewable Energy Certificate Option
3 Agreement with that party. And, the interventions have
4 come from two parties who also purchase Renewable Energy
5 Certificates and power, and we will be objecting to the
6 intervention of Constellation NewEnergy and Constellation
7 Commodity Services. And, we also were initially going to
8 object to the intervention of Freedom Energy, but Mr.
9 Rodier and I came to an agreement yesterday, which I'll
10 read into the record.

11 CHAIRMAN GETZ: Okay. Well, why don't
12 we regroup then. I thought maybe bifurcating the issues
13 might be helpful, but it sounds like we might not be able
14 to do that. So, why don't you continue with what you're
15 doing and give us your position on the Petitions to
16 Intervene and whatever agreement you may have reached.

17 MR. EATON: That's what I thought you
18 were looking for. I'm sorry.

19 CHAIRMAN GETZ: No, I thought there
20 might be a chance to deal with the case and what the
21 issues in the case were, and then deal with the
22 interventions separately. But never mind.

23 MR. EATON: All right. Mr. Rodier
24 agreed to limit the intervention of Freedom to the

1 following issues: The issues related to Renewable Energy
2 Certificates and the REC market. He agreed to ask no more
3 than 12 data requests. That Freedom Energy would submit
4 no direct testimony. He'd limit his cross-examination of
5 PSNH witness to no more than 45 minutes. And, Freedom
6 Energy will not seek access to information for which PSNH
7 seeks confidential treatment, unless such information
8 becomes public.

9 So, between PSNH and Freedom Energy,
10 that position is acceptable to us, and we will not object
11 to the intervention of Freedom Energy. Because they have
12 agreed to limit their intervention, and under RSA
13 541-A:32, I(b), the -- I'm sorry, from 541-A:32, III, the
14 Commission has the authority to limit the intervention of
15 a party.

16 With respect to Constellation, we
17 believe that Constellation has not presented facts which
18 show they have a substantial interest in the rights,
19 duties, and privileges, immunities would be affected by
20 this proceeding. They are a competitor for Renewable
21 Energy Certificates. And, they have demonstrated by their
22 objection to PSNH's Motion for Protective Treatment that
23 they want access to the confidential pricing terms and
24 conditions of both the Power Purchase Agreement and the

{DE 08-077} [Prehearing conference] (06-27-08)

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1 (Whereupon a recess was taken at 11:05
2 a.m. and the prehearing conference
3 reconvened at 11:25 a.m.)

4 CHAIRMAN GETZ: Okay. We're back on the
5 record in docket DE 08-077 and we'll be addressing the
6 Petitions to Intervene and the Motion for Confidential
7 Treatment. First, we'll grant the Motion for Limited
8 Appearance on behalf of Lempster Wind. We will grant the
9 Petition to Intervene by Freedom Energy, subject to the
10 conditions agreed to between Freedom and Public Service
11 Company of New Hampshire. We will grant the Petition to
12 Intervene of Constellation, subject to the condition that
13 it will not be permitted access to the confidential
14 information that was redacted as part of the Company's
15 filing. And, we will grant the Motion for Protective
16 Treatment filed by PSNH. And, just note the additional
17 issue that, to the extent that other confidential
18 information arises during the conduct of the proceeding,
19 we'll deal with those issues as they arise.

20 Anything else we need to address this
21 morning?

22 (No verbal response)

23 CHAIRMAN GETZ: Okay. Hearing nothing,
24 then we will close the prehearing conference and wait for

{DE 08-077} [Prehearing conference] (06-27-08)

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

Docket No. DE 08-

DIRECT TESTIMONY OF

S. B. Wicker, Jr.

Request for Approval Under RSA 362-F
of a
Power Purchase Agreement

May 28, 2008

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1 **Q. Do these Agreements meet the standards listed above?**

2 A. Yes, they do. The first standard requires that the agreement meet the purposes and goals of the
3 chapter in an efficient and cost-effective manner. The goals of the chapter are to promote
4 renewable energy production in New Hampshire. The Agreements will certainly do that, since
5 they support the construction of new renewable generation in New Hampshire that qualifies for
6 New Hampshire RECs. Moreover, the pricing of energy is based upon market prices and the
7 New Hampshire RECs are being obtained at a discount from both the legislatively determined
8 default price and current market prices.

9 The second standard requires that the Agreements be consistent with the restructuring policy
10 principles of RSA 374-F:3. Nothing in the Agreements is in conflict with any of the policy
11 principles contained in that statute.

12 The third standard requires that the Agreements create a reasonable mix of resources in light of
13 the state's energy policy in RSA 378:37 and the utility's integrated least cost resource plan.
14 The Agreements will provide PSNH with its first wind-powered renewable energy source and
15 assist PSNH in meeting the requirements of the Renewable Portfolio Standard (RSA 362-F). In
16 PSNH's Integrated Least Cost Resource Plan filed on September 30, 2007, PSNH discusses the
17 need to enter into longer-term contracts with renewable facilities that produce RECs.

18 The fourth standard discusses the need for procurement of power to be administratively
19 efficient and promoting market-driven competitive solutions. With the approval of these
20 Agreements, PSNH will obtain 24 MW of renewable power representing approximately 10% -
21 15% of PSNH's Class I requirement during 2009 – 2012. These Agreements form a model for
22 future negotiations, thus providing for administrative efficiency. Moreover, since the
23 Agreements have been negotiated with market participants, they are market-driven competitive
24 solutions to PSNH's need for renewable energy.

25 The fifth standard requires that the agreements provide economic development and
26 environmental benefits for New Hampshire. The Agreements provide the support to develop
27 this wind project and the renewable energy generated by the Project will reduce PSNH's
28 reliance on fossil-fuel-based market purchases.

*** REDACTED VERSION ***

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 08-077

In the Matter of:
Public Service Company of New Hampshire
Power Purchase Agreement with Lempster Wind, LLC

Direct Testimony

of

Steven E. Mullen
Assistant Director – Electric Division

October 1, 2008

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to regional air pollution. Finally, addressing RSA 374-F:3, V (e), although I don't view the proposed agreements as representing an "alternative means of providing transition or default services," the pricing terms in the proposed agreements should mitigate price volatility while also not creating new deferred costs, as the costs related to the proposed agreements will be included in PSNH's energy service rate which is periodically reconciled.

7 **Q. Regarding RSA 362-F:9, II (c), what is the energy policy set forth in RSA 378:37?**

8 A. RSA 378:37 reads as follows:

9 **378:37 New Hampshire Energy Policy.** – The general court declares that
10 it shall be the energy policy of this state to meet the energy needs of the
11 citizens and businesses of the state at the lowest reasonable cost while
12 providing for the reliability and diversity of energy sources; the protection
13 of the safety and health of the citizens, the physical environment of the
14 state, and the future supplies of nonrenewable resources; and consideration
15 of the financial stability of the state's utilities.
16

17 **Q. Do you think the proposed agreements are consistent with that policy?**

18 A. Yes. Adding a wind facility to PSNH's supply portfolio provides further fuel source diversity as well as a new generation source that has no harmful emissions and does not draw on the supplies of nonrenewable resources. Also, the agreements contain reasonable prices for RECs, energy and capacity that will provide supply to PSNH and its customers at known pricing terms, thereby avoiding potential future supplemental purchases at uncertain pricing terms.

24 **III. PRICING PROVISIONS FOR RECs, ENERGY AND CAPACITY**

25 **Q. Where do the pricing terms of the agreements fit in terms of an examination of whether the agreements are substantially consistent with the factors listed in RSA 362-F:9, II (a) – (e)?**

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