

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

2009 TERM
AUGUST SESSION

APPEAL OF FREEDOM PARTNERS, LLC

Docket No. 2009-0521

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S MOTION FOR
SUMMARY DISPOSITION UNDER RULES 10(1) and 25 (2)**

Public Service Company of New Hampshire ("PSNH") hereby respectfully moves, pursuant to Supreme Court Rules 10 (1) and 25 (2), that this Honorable Court summarily dispose of this docketed matter by affirming the decision of the Public Utilities Commission ("Commission") from which Freedom Partners, LLC ("Freedom") appeals. In support of its Motion, PSNH submits the attached Memorandum of Law, and says the following:

1. PSNH is required to comply with R.S.A. 362-F which states that providers of electricity must annually "obtain and retire" a certain number of renewable energy certificates ("RECs") through the year 2025. R.S.A. 362-F:3 (2009). Also, R.S.A. 362-F:9 permits electricity providers to enter into multi-year agreements for the purchase of RECs and electric power from a renewable energy source, subject to the approval of the Commission.

2. In order to comply with R.S.A. 362-F, PSNH entered into certain fifteen year agreements with Lempster Wind, LLC ("Lempster Wind") to purchase RECs,

power, and capacity. On May 29, 2008, PSNH petitioned the Commission to approve the above agreements pursuant to R.S.A. 362-F:9. The central issue before the Commission in the proceeding below was whether the agreements between Lempster Wind and PSNH are in the public interest. R.S.A. 362-F:9,II. A hearing on the merits was held on February 5, 2009. On May 1, 2009, the Commission issued Order No. 24,965 approving the agreements between PSNH and Lempster Wind. Subsequently, Freedom filed a Motion for Rehearing which the Commission denied in Order No. 24,982 on June 25, 2009. Freedom appealed these decisions under Supreme Court Rule 10. PSNH was the petitioner before the Commission, submitting the two Lempster Wind contracts for approval under R.S.A. 362-F:9.; therefore, it has standing as an Appellee. This court may decline to accept an appeal under Sup. Ct. Rule 10 and may summarily dispose of the appeal under Sup. Ct. Rule 25.

3. **Freedom has no standing to bring this appeal.** Freedom has suffered no injury in fact. *Appeal of Stonyfield Farm, Inc. & a.,* __ N.H. __, No. 2008-897, slip op. at 5, (Issued Aug. 5, 2009) (quoting *Libertarian Party of New Hampshire v. Sec’y of State*, 158 N.H. 194, 195 (2008)); *see also Asmussen v. Commissioner, New Hampshire Dept. of Safety*, 145 N.H. 578, 588-589 (2000) (holding that a “challenge to a party's standing on the ground that no actual controversy exists constitutes a challenge to the court's subject matter jurisdiction, which may be raised at any point in the proceedings.”) Freedom has not challenged the approval of the contracts as being in the public interest. Freedom asks for an

advisory opinion from this court as to whether PSNH may sell RECs produced by Lempster into the REC market outside New Hampshire in the future.

4. **There is no substantial question of law raised by the appeal.** Even if Freedom has standing to sustain its appeal, the issues raised therein do not present a substantial question of law. R.S.A. 362-F may potentially apply to four electric distribution companies; however, only PSNH is now required to accumulate RECs to satisfy its renewable energy portfolio requirements. Freedom raises the hypothetical issue of selling Lempster Wind RECs outside of New Hampshire; however, no such sale has taken place. In essence Freedom is requesting an advisory opinion from this court. *Libertarian Party*, 158 N.H. at 195-96; *Asmussen v. Commissioner, New Hampshire Dept. of Safety*, 145 N.H. 578, 588 (2000); *Town of Orford v. New Hampshire Air Resources Com'n*, 128 N.H. 539, 542 (1986). There is no requirement that PSNH and Lempster Wind petition the Commission before these parties enter into an agreement, and such a requirement makes little sense in the statutory scheme of encouraging long term REC sales contracts and supporting development of renewable energy.

5. **The decision rendered by the Commission was neither unjust nor unreasonable.** The Commission followed a reasonable approach to the review process, weighed the evidence in front of it and balanced the factors contained in R.S.A. 362-F:9, II in finding the Lempster Wind contracts to be in the public interest. Freedom does not challenge the Commission's finding that the contracts are in the public interest. The alleged mistake cited by Freedom, is a harmless

error not contributing to the overall determination that the contracts were in the public interest. The Commission substantially complied with R.S.A. 378:41.

6. **Conclusion.** Because Appellant does not have standing, fails to raise a substantial question of law, and the Commission's decision was neither unjust nor unreasonable, summary disposition is appropriate and should be granted.

WHEREFORE, for the reasons stated herein, as supported by the accompanying Memorandum of Law, PSNH respectfully requests this Honorable Court to summarily affirm the decision below, decline to accept Freedom's appeal, and grant such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

August 12, 2009
Date

By: 
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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Motion for Summary Disposition, the accompanying Memorandum of Law in Support of the Motion for Summary Disposition and Appellee's Appendix to its Memorandum of Law to be hand delivered or sent by First Class U.S. Mail, postage prepaid, to the persons on the attached Service List.

August 12, 2009
Date

Gerald M. Eaton
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