

DE 05-164

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Energy Service Rate Adjustment Proceeding

Order Dismissing Motion of Freedom Partners, LLC

ORDER NO. 24,655

August 18, 2006

On July 28, 2006, Freedom Partners, LLC d/b/a Freedom Energy (Freedom) submitted a pleading to the New Hampshire Public Utilities Commission (Commission) which Freedom styled a motion for “partial reconsideration” pursuant to RSA 541:3 of Order No. 24,644 (June 30, 2006). In Order No. 24,644, the Commission established 8.18 cents per kilowatt-hour as the rate to be charged as of July 1, 2006 by Public Service Company of New Hampshire (PSNH) for its Energy Service. The Freedom motion does not challenge the result but, rather, asks the Commission to “supplement its observations” made in Order No. 24,644 about the retail energy market in the PSNH service territory.

In addition to establishing a new Energy Service charge, Order No. 24,644 directed PSNH to submit an “anti-gaming proposal” in its upcoming filing seeking an Energy Service rate to be effective on January 1, 2007. As noted by Freedom, Order No. 24,644 expressed concern

about the potential for what some characterize as “gaming” – i.e., the strategic migration to and from PSNH’s Energy Service so as to take advantage of price fluctuations in a manner that imposes unfair recovery burdens on customers that may be unable to migrate due to such factors as the lack of competitive suppliers serving their market segment. We note that other jurisdictions have addressed this issue in similar circumstances.

Order No. 24,644, slip op. at 7. It is these “observations” that Freedom asks the Commission to “supplement,” on the ground that it may have “inadvertently created a less-than-complete picture of the costs and benefits of large customer migration.” Freedom Motion at 1. According to

Freedom, “PSNH’s circumstances may be different from other utilities in that all customers benefit when large customers switch. Presumably, if and when they return to PSNH, the burden on PSNH is no different than if the customer had never left.” *Id.* (emphasis added)

RSA 541:3 provides an opportunity for any person affected by an order of the Commission to seek rehearing “in respect to any matter determined in the action or proceeding, or covered or included in the order.” As the Commission has previously noted, “one must do more in a rehearing motion than simply request a differently worded order. Rather, the movant is obliged to state why the previously entered order is unlawful or unreasonable.” *Connecticut Valley Electric Co.*, 88 NH PUC 355, 356 (2003) (citations omitted).

In Order No. 24,644, the Commission simply recognized that it is important to consider the potential for gaming in order to avoid unfair burdens on customers generally and, as a consequence, directed PSNH to file a proposal addressing the issue. In response to this recognition, Freedom makes a twice-qualified assertion of fact regarding switching, namely, that PSNH’s circumstances may be different, and the burden on customers will presumably be no different. To the extent such assertions are correct, they would be properly made when PSNH files an anti-gaming proposal. Freedom’s “motion for partial reconsideration” is, at best, premature and should therefore be dismissed for failing to state a claim for which relief may be granted.

Moreover, even if Freedom could be understood as having presented a cognizable motion for rehearing pursuant to RSA 541:3, we would deny it inasmuch as no basis has been provided for concluding that Order No. 24,644 is unlawful or unreasonable. As indicated above, should it

become necessary for us to address the issue underlying Freedom's motion, we will address it if and when it becomes justiciable.

Based upon the foregoing, it is hereby

ORDERED, that the motion of Freedom Partners, LLC d/b/a Freedom Energy for rehearing of Order No. 24,644 is **DISMISSED**.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of August, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

ChristiAne G, Mason
Assistant Executive Director & Secretary