

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Re: Public Service Company of New Hampshire

DE 08-77

Motion to Make Lempster Wind, LLC a Mandatory Party

NOW COME Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively “Constellation”) and move the Commission to make Lempster Wind, LLC a mandatory party to this proceeding. In support of this motion, Constellation states as follows:

1. This proceeding was initiated by Public Service Company of New Hampshire (“PSNH”) to obtain approval of an arrangement with Lempster Wind, LLC (“Lempster”) under which PSNH would, among other things, purchase energy, capacity and renewable energy certificates from Lempster over a fifteen year period.
2. Approval by this Commission of the arrangement between PSNH and Lempster has the potential to impose new stranded costs on the customers of PSNH and to negatively affect the formation of a competitive electric market in New Hampshire. Therefore, it is critical that the Commission and its staff have available all relevant information before making a determination.
3. The central issue in this proceeding is whether the terms on which PSNH entered into the arrangement with Lempster are in the public interest. Constellation believes that further investigation of the Lempster/PSNH arrangement may reveal that PSNH’s proposal was accepted by Lempster because it was substantially more lucrative

to Lempster than the terms otherwise available in the then-prevailing market and therefore are not in the public interest.

4. Both Constellation and Freedom Energy Partners have propounded data requests to PSNH in this case that PSNH has answered by stating that Lempster, rather than PSNH, has the information requested and therefore it cannot be provided. Those data requests and responses are set forth in Appendix A to this motion.

5. Lempster has previously intervened in this proceeding, but it did so on a limited basis, presumably to avoid the potential for having to respond to discovery requests. *See Limited Appearance*, June 24, 2008

6. Under the contracts with Lempster, PSNH will be obligated to purchase the energy products that are the subject of this proceeding regardless of whether the Commission approves the contracts. Therefore, the sole purpose of this proceeding is to determine whether customers of PSNH will bear the cost of such products and the risk that that cost will be above market. Because the arrangement with Lempster will not be invalidated or altered by any action of the Commission in this docket, Lempster will not be harmed by providing information requested of it. In addition, should Lempster claim that the information to be provided is confidential or proprietary, any such information can be protected by a suitable order of the Commission under RSA 91-A.

7. Constellation expects that PSNH may argue that Lempster would not be subject to discovery even if it were a party because it has not submitted testimony in this docket. That argument does not apply in this situation because PSNH and Lempster are essentially co-proponents of the contracts submitted in this case, yet PSNH crafted its filing in a manner that intentionally avoided presenting a representative of Lempster as a

witness, instead picking and choosing what information regarding Lempster it would provide. In many other proceedings in which PSNH has sought approval of contracts with third parties, such as special contract proceedings, PSNH has willingly provided information in the control of the third party and, in many such proceedings, the other contracting party has been a party to the proceeding. *See, e.g., Re Pub. Serv. Co. of N.H.*, 77 NHPUC 346 (1992) (special contract with James River Corporation); *Re Northeast Hydrodevelopment Corp.*, 76 NHPUC 727 (1991) (power purchase agreement with PSNH); *Re Pub. Serv. Co. of N.H.*, 72 NHPUC 266 (1987) (special contract with JARL Extrusions); *Re Pub. Serv. Co. of N.H.*, 71 NHPUC 149 (1986) (special contract with Catholic Medical Center)

8. If Lempster refuses to participate in this proceeding or if PSNH refuses to provide the requested information regarding Lempster by seeking Lempster's active participation in this docket, the Commission should dismiss PSNH's filing for lack of sufficient information.

WHEREFORE, Constellation respectfully requests that the Commission order:

A. PSNH to seek and obtain the participation of Lempster in this proceeding as a full intervenor or, in the alternative, make representatives of Lempster available for discovery; and

B. Amend the procedural schedule in this docket to provide time for Lempster to respond to the data requests previously propounded to PSNH for which

PSNH claims not to have the requested information and allow reasonable follow up on such requests.

Respectfully submitted,

CONSTELLATION NEWENERGY, INC.
AND
CONSTELLATION ENERGY
COMMODITIESGROUP, INC.

By Its Attorneys

August 12, 2008

By:



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CERTIFICATE OF SERVICE

I hereby certify that I have served this Motion to Make Lempster Wind, LLC a Mandatory Party on all persons on the service list this 12th day of August, 2008.



Steven V. Camerino