

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Docket No. DE 08-145

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
MOTION TO STRIKE
THE OBJECTION
OF
FREEDOM LOGISTICS, LLC
AND
HALIFAX-AMERICAN ENERGY COMPANY, LLC

Pursuant to Rule Puc §203.07, Public Service Company of New Hampshire (hereinafter "PSNH" or "the Company") hereby moves to strike the Objection to PSNH's Motion to Dismiss Petition (the "Objection") filed by Freedom Logistics, LLC and Halifax-American Energy Company, LLC (the "Petitioners").

This Motion to Strike is based upon both two procedural matters. The first procedural defect is that the Objection was not timely filed. The second matter relates to the irrelevancy of nearly 50% of the materials contained in the Objection.

In support of this Motion to Strike, PSNH states the following:

I. The Objection Should be Stricken from the Record as It Was Not Timely Filed

The Objection was not timely filed. Per Rule 203.07(e), Motions, "Objections to a motion, except for motions for rehearing, shall be in writing and filed within 10 days of the date on which the motion is filed." Per Rule Puc 202.05(a), Date of Filing, "Any document submitted to the commission shall be deemed to have been filed on the date the commission receives a complete executed paper filing with the required number of copies, pursuant to Puc 203.02, except as provided in (b) below."

The Objection was a response to PSNH's Motion to Dismiss which had been filed with the Commission on November 24, 2008. Under Rule Puc 203.07(e), Petitioners had until December 4, 2008, (10 days) to file an objection. Petitioners' Objection was not filed with

the Commission until December 5, 2008, thereby violating the time limit set in the Commission's rules.

Although all the documents comprising Petitioners' Objection were dated December 4, 2008, the actual date of filing under Rule Puc 202.05(a) was not until the next day, December 5th. The Petitioners' Cover Letter concedes this point, as it is dated "December 4, 2008 **VIA OVERNIGHT MAIL.**" (Emphasis in original.) Thus, the Cover Letter itself evidences the fact that the Commission did not receive "a complete executed paper filing with the required number of copies" (Rule Puc 202.05(a)) until after the filing period had expired. This late filing is confirmed by the Secretary's "Daily Docket Filing" list for this docket, which shows the filing date for the Objection to be December 5, 2008. (Exhibit 1)

Due to the Petitioners' failure to timely file their Objection, that Objection should be stricken from the record of this proceeding.

II. Substantial Portions of the Objection Should be Stricken from the Record as they are Irrelevant

In the event that the Commission does not strike the entirety of Petitioners' Objection due to its being untimely filed, PSNH moves that substantial portions of the Objection should be stricken as they are irrelevant.

The majority of the materials submitted as part of the Petitioner's Objection is irrelevant to the issues propounded by PSNH in its Motion to Dismiss. In particular, of the 74 pages filed with the Objection by the Petitioners (cover letter, Objection, and Exhibits), more than 36 pages are devoted solely to the status of South Jersey Energy Company – an entity that is not one of the Petitioners in this proceeding. In neither the original Petition, nor in the Objection, is South Jersey Energy Company named as a principal joining in the Petition. Thus, nearly one-half of the materials supplied by Petitioners in their Objection are irrelevant to the Commission's determination of PSNH's Motion to Dismiss.

The Petitioners have been less than straightforward in identifying exactly who the Petitioners are. The confusion revolves around the identity and status of petitioner Halifax-American Energy Company, LLC ("HAEC"). Petitioners' filings, in a manner similar to a three-card Monte game, repeatedly refer to two corporate entities using three different names whenever HAEC is discussed.

As set forth in the original Petition, the actual Petitioners in this docket are Freedom Logistics, LLC (“Freedom”) and Halifax-American Energy Company, LLC (again, “HAEC”). The Objection does not dispute PSNH’s assertion that neither Freedom Logistics, LLC nor Halifax-American Energy Company, LLC are registered merchant suppliers under Chapter Puc 2000 of the Commission’s rules.

In the Petition, HAEC’s status and qualifications for receiving the relief requested are set forth as follows:

HAEC is a New Hampshire limited liability company created on July 30, 2007. HAEC is the New England agent for South Jersey Energy Company, a subsidiary of South Jersey Industries. South Jersey Energy Company is a registered competitive electric power supplier in New Hampshire.

(Petition, 6.)

In the Objection, HAEC’s identity and interests are similarly described:

HAEC is a New Hampshire limited liability company and acts as the exclusive New England agent for South Jersey Energy Company, a subsidiary of South Jersey Industries. South Jersey Energy Company is a registered competitive electric power supplier in New Hampshire. Halifax American Operating Company is also a trade name held by South Jersey Energy Company. HAEC’s product offering consists of streaming power from the hourly wholesale market directly to end users, using its membership in the power pool to do so.

(Objection at 4-5).

The Petitioners’ obfuscation of the identity and interests of the Petitioners becomes more apparent as the Objection continues:

HAEC is a trade name held by South Jersey Energy Company, a registered competitive supplier in the PSNH service territory. South Jersey Energy signed an Electric Services Supplier Agreement and an Electric Supplier Trading Partner Agreement with PSNH on November 3, 2008. (Attached hereto as Exhibit 1) Unfortunately, the Motion omits this fact.

(Objection, 5).

Thus, the Petitioners are seemingly attempting to bootstrap potential party-status qualification for HAEC by stating that HAEC is apparently both “a New Hampshire limited liability company” AND “a trade name held by South Jersey Energy Company, a registered competitive supplier in the PSNH service territory.” Obviously, HAEC is one or the other – not both.

From documents on file with the New Hampshire Secretary of State's office, it appears that the actual facts are as follows:

- Halifax-American Energy Company, LLC is in fact a New Hampshire limited liability company created on July 30, 2007. (Exhibit 2). Its business address is listed as 816 Elm Street in Manchester. *Id.* Its Certificate of Creation indicates that "The nature of the primary business or purposes are 'Advise and consult on the procurement of wholesale electricity.'" *Id.*
- Halifax American Operating Company (which PSNH shall abbreviate as "HAOC" to distinguish it from Petitioner HAEC) is a trade name held by South Jersey Energy Company. (Exhibit 3). Its business address is listed as being in Mays Landing, New Jersey. *Id.* Its business purpose is stated to be "retail sale of electricity." *Id.*
- South Jersey Energy Company, Inc. registered with the New Hampshire Secretary of State's office as a for-profit foreign corporation on August 14, 2007. (Exhibit 4). It is a New Jersey corporation with a principal office located in Mays Landing, New Jersey.

Thus, from official documentation filed with the New Hampshire Secretary of State's office, it is clear that HAEC and HAOC are not one-and-the-same entity, nor are they subsidiaries or affiliates under common control. As noted in both the Petition and Objection, HAEC alleges that "HAEC is the New England agent for South Jersey Energy Company." (Petition, 6 and Objection, 4-5).

However, despite HAEC's statement that it is South Jersey Energy Company's New England agent, nowhere does the Petition state that HAEC filed Petition as agent for South Jersey Energy Company, and that South Jersey Energy Company is the actual principal before the Commission. This is a very important distinction. As filed, the Petitioners are Freedom and HAEC, and no other entity. South Jersey Energy Company is not a party, either in its own right, as the alter-identity of HAOC, nor by HAEC filing on HAEC's own behalf.

The import of this distinction becomes very apparent if the Commission decided to grant the Petition and initiate an adjudicative proceeding. Is South Jersey Energy Company a party, or not? Would South Jersey Energy Company be required to comply with the

Commission's procedural rules (such as responding to discovery requests made pursuant to Rule Puc 203.09)?

A reading of the Commission's rules substantiates PSNH's contention that South Jersey Energy Company, Inc. (either in its own name or in its HAOC trade name) is not a Petitioner. Rule Puc 203.04, Form, sets forth the requirements for Petitions filed with the Commission. Subsection (a)(7) requires that "(a) Petitions, pleadings, motions and briefs shall:...(7) Identify the name of the petitioner, applicant or other party who is the subject of such proceeding;" As noted earlier, in the Petition the actual Petitioners in this docket are Freedom Logistics, LLC ("Freedom") and Halifax-American Energy Company, LLC ("HAEC"). Nowhere is either South Jersey Energy Company, Inc. or HAOC identified as a party.

Similarly, Rule Puc 203.05, Pleadings, contains similar requirements. Subsection (a)(4) requires that "(a) All petitions and motions shall include the following:...(4) The legal name of each person seeking the authorization or relief and the address or principal place of business of such person;" Nowhere does the Petition state that South Jersey Energy Company, Inc. is seeking the relief, nor is South Jersey Energy Company, Inc.'s address or principal place of business provided.

As South Jersey Energy Company, Inc. is not a "petitioner" in this proceeding, then vast amounts of the materials contained in the Objection are not relevant. In particular, Exhibit 1 of the Objection, comprising 36 pages of various agreements and ISO documents from South Jersey Energy Company, Inc. have no relevance to the issue of whether HAEC has standing to receive the relief requested.

In the Objection itself, PSNH believes the following portions should be stricken as irrelevant: the paragraph beginning at the bottom of page 3 and continuing to the top of page 4; the paragraph beginning at the bottom of page 4 and continuing to the top of page 5; the portion of the first full paragraph on page 5 beginning "HAEC is a trade name held by South Jersey Energy" to the end of that paragraph.

III. Conclusion

For the reasons set forth herein, the Commission should strike the Objection filed by Freedom Logistics, LLC and Halifax-American Energy Company, LLC.

Respectfully submitted this 15th day of December, 2008.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By:  _____

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