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Debra A. Howland
Executive Director and Secretary
State of New Hampshire
Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

DE 13-322
South Jersey Energy Company
Objection to 2011 Alternative Compliance Payment

Dear Ms. Howland:

The purpose of this brief letter on behalf of South Jersey Energy Company ("SJE") is to provide brief comment to the Staff Memorandum submitted in this proceeding on April 30, 2014. There are two matters which SJE wishes to comment on at this stage of the proceeding.

The first matter pertains to the following paragraph on page 6 of the Memorandum:

In a supplemental letter dated February 6, 2014, SJE's attorney noted that RSA 362-F:7, I permits the banking of unused RECs of the proper class issued for production during the prior two years to meet up to 30 percent of a provider's RPS requirements, and he argued that "provision of law trumps any contrary rule, including Puc Form E-2500." Staff notes, however, that the Commission's Puc 2500 rules have been adopted pursuant to statutory authority in RSA 362-F:13, I, which specifically direct the Commission to develop rules to administer the RPS program, and under RSA 541-A. Staff understands these rules have the force of law, and can be waived only pursuant to the procedures and standards set forth in Puc 201.05. The rules implement the statute and are not superseded by the statute.

By way of brief summary, SJE believes that Rule Puc 2503.04 is inconsistent with RSA 362-F:7, I which provides as follows:

Certificates shall only be used by providers of electricity for compliance with the requirements of RSA 362-F:3 in the year in which the generation represented by the certificate was produced, *except that unused certificates of the proper class issued for*

production during the prior 2 years may be used to meet up to 30 percent of a provider's requirements.

RSA 362-F:7, I (Emphasis added.)

SJE is willing and able to demonstrate to the Commission's satisfaction through NEPOOL GIS records that it is in full compliance with RSA 362-F:7, I, and that the certificates have not been used for any other purpose. There is no provision or category in NEPOOL-GIS or RSA 362-F:7, I for "banked" certificates. In contrast, Rule Puc 2503.04 purports to require that unused certificates must *also* be "banked" in order to be eligible for use in compliance with RSA 362-F:7, I.¹ The law is well settled that a rule cannot be inconsistent with a statute.

The second matter which SJE wishes to comment on is the statement in the Staff Memorandum the Commission's authority to commence an adjudicative is "permissive." It is well-established that, in a contested case², the Commission must commence an adjudicate proceeding. *Rule Puc 102.01*.

I have sent a copy of this letter to all parties on the Commission's Service List for this proceeding.

Thank you for considering these comments.

Sincerely,
/s/ James T. Rodier

¹ There are 32 defined terms in Rule Puc 2502; "banked" is not one of them.

² "Contested case" means a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by the commission after an opportunity for hearing. *Rule Puc 102.04*.