

NEW APPLICATION



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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY [Signature]

In the matter of:

MOUNTAIN STATE POWER, INC., a
Delaware Corporation d/b/a "Sovereign
Energy Partners, Inc.," an unincorporated
business and "Sovereign Energy
International"

Respondent.

DOCKET NO. S-20831A-12-0010

**TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

**NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY
RESPONDENT HAS 20 DAYS TO REQUEST A HEARING
RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondent MOUNTAIN STATE POWER, INC. d/b/a "Sovereign Energy Partners, Inc.," an unincorporated business, and "Sovereign Energy International" is engaging in or is about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, of the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

**I.
JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

1 **II.**

2 **RESPONDENT**

3 2. At all relevant times, MOUNTAIN STATE POWER, INC., d/b/a "Sovereign
4 Energy Partners, Inc" and "Sovereign Energy International" ("SEP") has been issuing, offering
5 and/or selling within or from Arizona the cooperative wind farm contracts discussed below.

6 3. At all relevant times, SEP has not been registered with the Commission as a
7 securities dealer.

8 4. At all relevant times, SEP has maintained a business address within the state of
9 Arizona. Additionally, SEP represented in a July 12, 2011 letter to the South Dakota Department
10 of Revenue & Regulation Division of Securities that SEP was domiciled in Arizona.

11 5. SEP is and at all relevant times has been a corporation duly organized under the
12 laws of Delaware in the name MOUNTAIN STATE POWER, INC. SEP has at no relevant time
13 been a foreign corporation authorized to transact business in Arizona or a domestic corporation
14 duly organized under the laws of Arizona.

15 6. SEP has represented to offerees and/or investors that "Sovereign Energy Partners,
16 Inc." is a Delaware corporation. The Delaware Department of State Division of Corporations has
17 no records confirming the claim that "Sovereign Energy Partners, Inc." has at any relevant time
18 been a registered Delaware corporation. On information and belief, "Sovereign Energy Partners,
19 Inc." has at no relevant time been a foreign corporation authorized to transact business in Arizona
20 or a domestic corporation duly organized under the laws of any U.S. jurisdiction.

21 7. On information and belief, "Sovereign Energy Partners, Inc." is a fictitious name
22 under which SEP operates.

23 8. SEP has conducted business using the name "Sovereign Energy International."
24 On information and belief, "Sovereign Energy International" has at no relevant time been a
25 foreign legal entity authorized to transact business in Arizona or a domestic legal entity duly
26 organized under the laws of any U.S. jurisdiction.

1 negotiations necessary to build a generating facility, interconnect it with the national power grid, and
2 sell power.

3 **1. SEP's General Solicitations Through the Internet**

4 18. SEP's website at www.sovereignenergypartners.com provides information about the
5 company as well as contact information for prospective "new customers," including a toll free
6 telephone number and a sales e-mail address.

7 19. At all relevant time, SEP's website has stated, inter alia:

- 8
- 9 • "Sovereign Energy announcing today that they are partnering to build second-
largest wind-power project in South Dakota."
 - 10 • "Because the energy project is on private land, it will not require approval from
federal or state officials."
 - 11 • "We anticipate a very thorough permitting process where the public will be able
12 to comment on the project We look forward to a dialogue with the
community."
 - 13 • "Sovereign Energy offers the opportunity to participate in ownership of their
local renewable energy production, or investor owned utility."
 - 14 • "Managed Cooperative utility provides for all the benefits of ownership without
15 the burdens. Contact a sales rep for more information."
 - 16 • "Investors actually own an interest in the utility, and can share in the profits,
which may result in a faster, longer and larger ROI than traditional investments."
 - 17 • "Sovereign Energy has successfully applied best practices in many areas of its
18 operation, resulting in extensive:
 - 19 • Development experience
 - 20 • Power generation expertise
 - 21 • Energy marketing and trading skills"
 - 22 • "New Customer: please contact our sales office: 888-825-wind (9463) Email -
Sales@SovereignEnergyPartners.com"

23 20. At all relevant times, SEP's Representatives have further provided potential Arizona
24 investors with an additional website address that allows potential investors to gain access to a
25 subsection of SEP's website that includes additional wind farm investment information (the
26 "Investor Section"). The Investor Section includes an investor purchase agreement as discussed
further below in Section B.

1 21. The Investor Section cannot be reached by following any link on SEP's main web
2 page. Rather, the Investor Section is accessible to any person who types "/learn" after the end of
3 SEP's home page URL.¹

4 22. Another presently available SEP web page (the "LinkedIn Ad") is accessible on
5 LinkedIn, a business networking website that includes over 100 million members. The LinkedIn Ad
6 is viewable by any person in Arizona.

7 23. SEP's LinkedIn Ad states, inter alia: "Sovereign is developing a large Wind Farm
8 Project in the Williston Basin area of South Dakota" and "With Turbines ranging from 100 Kw to
9 1.5 Mw, Sovereign Energy can provide a complete turn-key solution to becoming an owner of your
10 very own commercial Wind Turbine."

11 24. SEP also provides an internet link on the LinkedIn Ad which sends any person
12 directly to the Investor Section of SEP's website.

13 **2. SEP's Solicitations for Wind Farm Investors**

14 25. An SEP Representative sent several e-mails on or about September 22, 2011 in
15 response to inquiries made by a person who has at all relevant times resided within Arizona (the
16 "Arizona Offeree.") The e-mails sent to the Arizona Offeree contained documents, photographs,
17 and a link to the Investor Section of SEP's website.

18 26. The e-mails sent to the Arizona Offeree included a Return on Interest ("ROI")
19 summary forecasting a 2MW² wind farm facility costing just over \$5 million to construct. The
20 ROI summary states that SEP is offering for sale twenty 100kw³ "opportunities" at a price of
21 \$250,160 each.

22 27. An SEP Representative sent another email to the Arizona Offeree on September
23 22, 2011, that included a "Business Model" that projected that SEP would contribute \$2.5 million
24 toward the \$5 million wind farm facility.

25
26 ¹ A Uniform Resource Locator identifies a particular website or computer file on the internet.

² A megawatt is a measure of generator capacity equal to 1,000,000 watts.

³ A kilowatt is a measure of generator capacity equal to 1,000 watts.

1 28. The Business Model states that SEP “is willing to pay to purchaser [*i.e.*, investor]
2 100% of profit (\$1,000,000) from all 20 turbines, because company already got its profit” and
3 “Purchasers paid \$2,500,000. Return is \$1,000,000. ROI = 40%.” The Business Model also
4 provides examples of the 40% return on investment if an investor were to contribute \$250,000,
5 \$100,000, or \$25,000.

6 29. An SEP Representative sent another e-mail to the Arizona Offeree dated
7 September 22, 2011, that states: “Pursuant to your request, please find attached a letter regarding
8 the opportunity to participate as an owner in a privately held utility. At your convenience, please
9 visit our main web site located at <http://www.sovereignenergypartners.com/learn>.”

10 30. The web address in the above e-mail directs the Arizona Offeree to the Investor
11 Section of SEP’s website, wherein, inter alia, a purchase agreement is presented.

12 **B. The Purchase Agreement**

13 31. At all relevant times, SEP and its Representatives have made available to potential
14 Arizona investors an “Agreement for Purchase of Wind Turbine Generator” (the “Purchase
15 Agreement.”) The Purchase Agreement is made available within the “Documents” tab of the
16 Investor Section on SEP’s website.

17 32. The Purchase Agreement states that an investor would be called an Equipment
18 Owner, and that the Equipment Owner “desires to place wind turbines in which it holds ownership
19 interest, in whole or in part, on the property of Land Owner.” SEP is defined in the Purchase
20 Agreement as the Land Owner.

21 33. The Purchase Agreement states the responsibilities of an Equipment Owner are to
22 “purchase, finance, fund or otherwise acquire wind turbines To place or allow to be placed such
23 equipment onto the property of land owner. . . .” Under the Purchase Agreement, the Equipment
24 Owner shall also pay a onetime payment of 50% of the gross revenues generated by the wind
25 project, plus a rental fee of .05% of the gross revenue derived from the Equipment Owner’s wind
26

1 turbine. The Purchase Agreement further states that the Land Owner will not receive the payments
2 if business conditions cause gross revenue to fall below targets.

3 34. The Purchase Agreement assigns no other significant duties to the Equipment Owner
4 beyond paying money to acquire the wind turbine(s).

5 35. In contrast, the Purchase Agreement obligates SEP to perform every material act
6 necessary to build a wind farm and to generate and sell electricity. SEP was specifically
7 responsible for “[d]eveloping, constructing, reconstructing, erecting, installing, improving,
8 replacing, relocating and removing from time to time, and using, maintaining, repairing, operating,
9 and monitoring” the wind turbines, power collection and distribution facilities, underground
10 conduits, roads, utilities, laydown areas, signs, fences and gates, and other improvements in any way
11 related to the project.

12 36. The Purchase Agreement states that SEP will pool the collective revenue generated
13 by the 20 turbines, and then share with investors on a quarterly basis said revenue in proportion to
14 each investor’s principal investment. Within the Purchase Agreement, SEP projects not less than \$1
15 million in net revenue, and at least a 40% quarterly return on each investment.

16 **C. The Misrepresentations and Omissions of Material Fact**

17 **1. Ownership of the Wind Farm Property**

18 37. At all times relevant, SEP and its Representatives represented to offerees and
19 investors that SEP owns the Wind Farm Property on which the wind farm will be built. For
20 example, as set forth in the Purchase Agreement, SEP purportedly grants potential investors many
21 easements upon the Wind Farm Property, including:

- 22 • Easements for “any audio, visual, view, light, noise, vibration, air turbulence,
23 wake, shadow flicker, electromagnetic [sic], television reception, ice or other
24 weather created hazards” resulting in any way from the wind farm.
- 25 • An easement for ingress, egress, and access to the property.
- 26 • Distribution easements for electricity distribution infrastructure.

1 38. Unknown to at least one potential investor, SEP has at no relevant time held a
2 deed to the Wind Farm Property.

3 39. An SEP Representative executed a land purchase agreement concerning the Wind
4 Farm Property on or about November 10, 2010 (the "Land Purchase Agreement.")

5 40. The Land Purchase Agreement states that \$388,000 of the purchase price would
6 be financed through a mortgage lasting 300 months commencing January 10, 2011. It further
7 states that the seller will deliver a deed to the buyer only "[u]pon payment in full by Buyer of all
8 sums due hereunder."

9 41. On information and belief, SEP has not paid the full purchase price for the Wind
10 Farm Property.

11 42. The Land Purchase Agreement states that the buyer [*i.e.*, SEP] "will keep said
12 realty free of all liens and encumbrances of every kind and nature including land leases or
13 rentals" until full payment is tendered or the seller provides written permission.

14 43. On information and belief, SEP has not ever had written permission to encumber
15 the Wind Farm Property, as SEP and its Representatives have represented to offerees and/or
16 investors.

17 **2. The South Dakota Public Utilities Commission "Permit Package"**

18 44. SEP also provides potential investors a document made available on its website
19 Investor Section described as a "permit package," titled "Sovereign Energy Partners, Application
20 to the South Dakota Public Utilities Commission for a Wind Farm Facility Permit," and dated
21 July 10, 2010.

22 45. In truth and not known to at least one investor, the "permit package" simply
23 copies large portions of material from the genuine application(s) of one or more unaffiliated wind
24 farms.

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1 46. In truth and not known to at least one investor, at least some portions of text SEP
2 copied claim that SEP performed site-specific permitting work regarding its Wind Farm
3 Property.

4 47. On information and belief and unknown to at least one potential investor, SEP
5 Representatives actually performed no independent surveying, testing, nor other work that SEP
6 represents to have completed in the “permit package.” For example and without limitation:

- 7 • SEP present a full page table summarizing the land cover surrounding its project area
8 in the “permit package.” The table is copied line by line from a table presented in the
9 unaffiliated Buffalo Ridge II wind farm permit application, which was filed with the
10 South Dakota Public Utilities Commission two years before the date stated on the
11 “permit package.” The two tables are identical, even though the project sites are on
12 opposite sides of the state.
- 13 • SEP Representatives copied several paragraphs titled “Deterioration of Water
14 Quality” word-for-word from an unaffiliated permit application, changing only the
15 project location to SEP’s own. SEP states in one sentence: “In addition South Dakota
16 [Department of Environment and Natural Resources] has issued a General Storm
17 Water Permit for Construction Activities.”

18 48. Unknown to at least one potential investor, SEP has not in fact been issued a
19 General Storm Water Permit for Construction Activities.

20 49. Unknown to at least one potential investor, SEP has not actually filed the “permit
21 package” with the South Dakota Public Utility Commission.

22 50. The “permit package” remains available on SEP’s website in the form of an
23 Adobe Acrobat Portable Document Format (.pdf) file with a date of last modification of October
24 25, 2010.

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IV.

VIOLATION OF A.R.S. § 44-1841

(Offer and Sale of Unregistered Securities)

51. From at least September, 2011 to the present, SEP has been offering or selling securities in the form of investment contracts within and/or from Arizona.

52. The securities referred to above are not registered pursuant to Articles 6 or 7 of the Securities Act.

53. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

54. SEP is offering or selling securities in the form of investment contracts within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

55. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

56. In connection with the offer or sale of securities in the form of investment contracts within or from Arizona, SEP is, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue statements of material fact or omitting to state material facts that are necessary in order to make the statements made not misleading in light of the circumstances under which they are made; or (iii) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit upon offerees and purchasers. SEP's conduct includes, but is not limited to, the following:

- 1 a. Promising in the Purchase Agreement to execute liens, encumbrances, and rights of
- 2 way in favor of investors, which SEP has at all relevant times been forbidden to
- 3 grant to the investors under SEP’s Land Purchase Agreement.
- 4 b. Presenting to investors a “permit package” for the South Dakota Public Utilities
- 5 Commission in support of its wind farm project, despite the fact that SEP filed no
- 6 such package with that agency, and SEP apparently copied large portions of an
- 7 unrelated project application presented as if it were SEP’s own site-specific
- 8 permitting work.
- 9 57. This conduct violates A.R.S. § 44-1991.

VII.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

13 THEREFORE, based on the above allegations, and because the Commission has determined
14 that the public welfare requires immediate action,

15 IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that
16 Respondent, its agents, servants, employees, successors, assigns, and those persons in active concert
17 or participation with Respondent CEASE AND DESIST from any violations of the Securities Act.

18 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in
19 effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

20 IT IS FURTHER ORDERED that this Order shall be effective immediately.

VIII.

REQUESTED RELIEF

23 The Division requests that the Commission grant the following relief:

- 24 1. Order Respondent to permanently cease and desist from violating the Securities Act
- 25 pursuant to A.R.S. § 44-2032;
- 26

1 Persons with a disability may request a reasonable accommodation such as a sign language
2 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
3 Bernal, ADA Coordinator, voice phone number (602) 542-3931, e-mail sabernal@azcc.gov.
4 Requests should be made as early as possible to allow time to arrange the accommodation.

5 **X.**

6 **ANSWER REQUIREMENT**

7 Pursuant to A.A.C. R14-4-305, if Respondent requests a hearing, respondent must deliver
8 or mail an Answer to this Temporary Order and Notice to Docket Control, Arizona Corporation
9 Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the
10 date of service of this Temporary Order and Notice. Filing instructions may be obtained from
11 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
12 www.azcc.gov/divisions/hearings/docket.asp.

13 Additionally, the respondent must serve the Answer upon the Division. Pursuant to A.A.C.
14 R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the
15 Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed
16 to Steven Briggs.

17 The Answer shall contain an admission or denial of each allegation in this Temporary
18 Order and Notice and the original signature of the respondent or the respondent's attorney. A
19 statement of a lack of sufficient knowledge or information shall be considered a denial of an
20 allegation. An allegation not denied shall be considered admitted.

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When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 12 day of January, 2012.


Matthew J. Neubert
Director of Securities