

ORIGINAL

OPEN MEETING ITEM

8/9/12



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COMMISSIONERS
GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR



SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 388-1335
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

MEMORANDUM

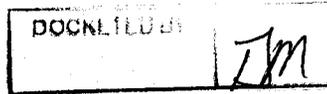
TO: Gary Pierce, Chairman
Bob Stump
Sandra D. Kennedy
Paul Newman
Brenda Burns

Arizona Corporation Commission

DOCKETED

JUL 27 2012

FROM: Matthew J. Neubert
Director of Securities



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AZ CORP COMMISSION
DOCKET CONTROL

DATE: July 16, 2012

RE: *In re Mountain State Power, Inc. d/b/a "Sovereign Energy Partners, Inc.," an unincorporated business, and "Sovereign Energy International, Docket No. S-20831A-12-0010*

CC: Ernest G. Johnson, Executive Director

Attached for your consideration is a proposed default Order to Cease and Desist and Order for Administrative Penalties ("Order") against Mountain State Power, Inc. d/b/a "Sovereign Energy Partners, Inc.," an unincorporated business, and "Sovereign Energy International" ("MSP" or "Respondent"). The Order makes permanent a temporary cease and desist order and resolves a Notice of Opportunity for Hearing filed January 12, 2012 which has gone unanswered by MSP. A criminal case against the alleged principals of MSP is pending in United States District Court for the District of Wyoming.

MSP claimed that it was building a wind energy generation facility ("wind farm") in South Dakota and presented offerees the opportunity to invest. The Order finds that MSP violated A.R.S. §§ 44-1841 and 44-1842 by offering unregistered securities by telephone, e-mail and internet. Respondent also violated A.R.S. § 44-1991 by making false representations about its ownership of land on which to build the wind farm, and misrepresenting the existence and status of permits it claimed in relation to the wind farm.

The Order requires Respondents to permanently cease and desist from violating the Securities Act, and to pay a \$20,000 administrative penalty. The Division recommends the Order as appropriate, in the public interest and necessary for the protection of investors.

Originator: Steven C. Briggs

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE, Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 In the matter of:

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

14 Respondent.

DOCKET NO. S-20831A-12-0010

**ORDER TO CEASE AND DESIST AND
ORDER FOR ADMINISTRATIVE
PENALTIES**

RE: MOUNTAIN STATE POWER, INC

15 On January 12, 2012, the Securities Division ("Division") of the Arizona Corporation
16 Commission ("Commission") filed a Temporary Order to Cease and Desist and Notice of
17 Opportunity for Hearing ("Temporary Order") against Respondent MOUNTAIN STATE POWER,
18 INC. d/b/a "Sovereign Energy Partners, Inc.," an unincorporated business, and "Sovereign Energy
19 International."

20 On January 17, 2012 a copy of the Temporary Order was sent to the last known business
21 address of MOUNTAIN STATE POWER, INC. d/b/a "Sovereign Energy Partners, Inc.," an
22 unincorporated business, and "Sovereign Energy International" at 7702 E. Doubletree Ranch Rd.,
23 Suite 300, Scottsdale, AZ 85258 via United States Postal Service. The Division received the return
24 receipt on January 19, 2012 bearing the signature of B. Mercer. Regus, a virtual office company,
25 operates at the above address and provides mail forwarding and other services to clients.

26 MOUNTAIN STATE POWER, INC. d/b/a "Sovereign Energy Partners, Inc.," an
unincorporated business, and "Sovereign Energy International," using the name Sovereign Energy
Partners, executed a contract with Regus which provided for Regus to periodically forward mail
received on its behalf of to another address. MOUNTAIN STATE POWER, INC. d/b/a "Sovereign

1 Energy Partners, Inc.,” an unincorporated business, and “Sovereign Energy International”
2 acknowledged receipt of the Temporary Order in an e-mail sent to the Division on or about February
3 28, 2012, by a person identifying himself as Bill Baker.

4 **I.**

5 **Findings of Fact**

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

8 2. At all relevant times, MOUNTAIN STATE POWER, INC., a former Delaware
9 corporation d/b/a “Sovereign Energy Partners, Inc” and “Sovereign Energy International”
10 (hereafter collectively as “SEP”) has issued, offered and/or sold within or from Arizona the
11 cooperative wind farm contracts discussed below.

12 3. At all relevant times, SEP was not registered with the Commission as a securities
13 dealer.

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

17 5. SEP was organized on or about July 23, 2009 under the laws of Delaware in the
18 name MOUNTAIN STATE POWER, INC. SEP’s incorporation was voided as of March 1, 2011
19 for failure to file and pay annual corporate franchise taxes. SEP has at no relevant time been a
20 foreign corporation authorized to transact business in Arizona or a domestic corporation duly
21 organized under the laws of Arizona.

22 6. SEP represented to offerees and/or investors that “Sovereign Energy Partners,
23 Inc.” is a Delaware corporation. The Delaware Department of State Division of Corporations has
24 no records confirming the claim that “Sovereign Energy Partners, Inc.” has at any relevant time
25 been a registered Delaware corporation. On information and belief, “Sovereign Energy Partners,
26

1 Inc.” has at no relevant time been a foreign corporation authorized to transact business in Arizona
2 or a domestic corporation duly organized under the laws of any U.S. jurisdiction.

3 7. On information and belief, “Sovereign Energy Partners, Inc.” is a fictitious name
4 under which SEP operates.

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

9 9. On information and belief, “Sovereign Energy International” is a fictitious name
10 under which SEP operates.

11 10. SEP may be referred to hereafter as “Respondent” or “SEP.”

12 **A. SEP’s General Solicitation of Investors for the Wind Farm Business**

13 11. From no later than September, 2011 through no sooner than March 16, 2012, SEP
14 has issued, offered and/or sold to the Arizona general public investments in a wind farm.

15 12. At all relevant times, SEP caused to be represented to offerees and/or investors
16 that the wind farm will be constructed on approximately 1400 acres of land in Butte County,
17 South Dakota (the “Wind Farm Property”). The investments are offered in the name of
18 Sovereign Energy Partners, Inc.

19 13. SEP caused one or more individuals to solicit investment funds on behalf of SEP
20 and/or to represent SEP in related matters (the “Representative(s)”).

21 14. On information and belief, SEP’s Representatives used fictitious names while
22 representing SEP.

23 15. At all relevant times, SEP’s Representatives informed offerees and/or investors that
24 they could participate in a “Cooperative Wind Farm Project” by purchasing from SEP a fractional or
25 complete ownership interest in a wind turbine generator to be placed on SEP’s Wind Farm Property.
26

1 16. At all relevant times, SEP's Representatives further represented to offerees and/or
2 investors that SEP would be solely responsible for the construction, operation, and maintenance of
3 the wind turbines and the related facilities and equipment needed to generate and sell electricity on
4 SEP's land.

5 17. SEP's Representatives further informed offerees and/or investors that SEP would be
6 solely responsible for obtaining building and operating permits, regulatory compliance, and contract
7 negotiations necessary to build a generating facility, interconnect it with the national power grid, and
8 sell power.

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

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

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

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

- “New Customer: please contact our sales office: 888-825-wind (9463) Email - Sales@SovereignEnergyPartners.com”

20. At all relevant times, SEP’s Representatives further provided potential Arizona investors with an additional website address that allows potential investors to gain access to a subsection of SEP’s website that included additional wind farm investment information (the “Investor Section”). The Investor Section included an investor purchase agreement as discussed further below in Section B.

21. The Investor Section could not be reached by following any link on SEP’s main web page. Rather, the Investor Section was accessible to any person who typed “/learn” after the end of SEP’s home page URL.¹

22. Another SEP web page (the “LinkedIn Ad”) was accessible on LinkedIn, a business networking website that includes over 100 million members. The LinkedIn Ad is viewable by any person in Arizona.

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

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

2. SEP’s Solicitations for Wind Farm Investors

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

26. The e-mails sent to the Arizona Offeree included a Return on Interest (“ROI”) summary forecasting a 2MW² wind farm facility costing just over \$5 million to construct. The

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

1 ROI summary states that SEP is offering for sale twenty 100kw³ “opportunities” at a price of
2 \$250,160 each.

3 27. An SEP Representative sent another email to the Arizona Offeree on September
4 22, 2011, that included a “Business Model” that projected that SEP would contribute \$2.5 million
5 toward the \$5 million wind farm facility.

6 28. The Business Model states that SEP “is willing to pay to purchaser [*i.e.*, investor]
7 100% of profit (\$1,000,000) from all 20 turbines, because company already got its profit” and
8 “Purchasers paid \$2,500,000. Return is \$1,000,000. ROI = 40%.” The Business Model also
9 provides examples of the 40% return on investment if an investor were to contribute \$250,000,
10 \$100,000, or \$25,000.

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

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

17 **B. The Purchase Agreement**

18 31. At all relevant times, SEP and its Representatives made available to potential
19 Arizona investors an “Agreement for Purchase of Wind Turbine Generator” (the “Purchase
20 Agreement.”) The Purchase Agreement was made available within the “Documents” tab of the
21 Investor Section on SEP’s website.

22 32. The Purchase Agreement states that an investor would be called an Equipment
23 Owner, and that the Equipment Owner “desires to place wind turbines in which it holds ownership
24
25

26 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 interest, in whole or in part, on the property of Land Owner.” SEP is defined in the Purchase
2 Agreement as the Land Owner.

3 33. The Purchase Agreement states the responsibilities of an Equipment Owner are to
4 “purchase, finance, fund or otherwise acquire wind turbines To place or allow to be placed such
5 equipment onto the property of land owner. . . .” Under the Purchase Agreement, the Equipment
6 Owner shall also pay a onetime payment of 50% of the gross revenues generated by the wind
7 project, plus a rental fee of .05% of the gross revenue derived from the Equipment Owner’s wind
8 turbine. The Purchase Agreement further states that the Land Owner will not receive the payments
9 if business conditions cause gross revenue to fall below targets.

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

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

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

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

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

25 37. At all times relevant, SEP and its Representatives represented to offerees and
26 investors that SEP owns the Wind Farm Property on which the wind farm will be built. For

1 example, as set forth in the Purchase Agreement, SEP purportedly grants potential investors many
2 easements upon the Wind Farm Property, including:

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

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

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

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

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

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

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

24 **2. The South Dakota Public Utilities Commission “Permit Package”**

25 44. SEP also provided potential investors a document made available on its website
26 Investor Section described as a “permit package,” titled “Sovereign Energy Partners, Application

1 to the South Dakota Public Utilities Commission for a Wind Farm Facility Permit,” and dated
2 July 10, 2010.

3 45. In truth and not known to at least one investor, the “permit package” simply
4 copies large portions of material from the genuine application(s) of one or more unaffiliated wind
5 farms.

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

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

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

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

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

II.

CONCLUSIONS OF LAW

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

51. Respondent offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

52. Respondent violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

53. Respondent violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

54. Respondent violated A.R.S. § 44-1991 by (a) employing a device, scheme, or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit.

55. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

56. Respondent's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

ORDER

THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that SEP, and any of SEP's agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that SEP shall pay an administrative penalty in the amount of \$20,000. Payment is due in full on the date of this Order.

1 Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest as
2 allowed by law.

3 IT IS FURTHER ORDERED that the penalty ordered hereinabove shall bear interest at the
4 rate of the lesser of ten percent per annum or at a rate per annum that is equal to one per cent plus
5 the prime rate as published by the board of governors of the federal reserve system in statistical
6 release H.15 or any publication that may supersede it on the date that the judgment is entered.

7 IT IS FURTHER ORDERED, that pursuant to A.R.S. § 44-1974, upon application the
8 Commission may grant a rehearing of this Order. The application must be received by the
9 Commission at its offices within twenty calendar days after entry of this Order. Unless otherwise
10 ordered, filing an application for rehearing does not stay this Order. If the Commission does not
11 grant a rehearing within twenty calendar days after filing the application, the application is
12 considered to be denied. No additional notice will be given of such denial.

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1 IT IS FURTHER ORDERED, that if SEP fails to comply with this order, the Commission
2 may bring further legal proceedings against SEP, including application to the superior court for an
3 order of contempt.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6
7
8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12
13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
14 Executive Director of the Arizona Corporation
15 Commission, have hereunto set my hand and caused the
16 official seal of the Commission to be affixed at the Capitol,
17 in the City of Phoenix, this _____ day
18 of _____, 2012.

19
20
21 _____
22 ERNEST G. JOHNSON
23 EXECUTIVE DIRECTOR

24
25 _____
26 DISSENT

DISSENT

27 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
28 Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.
(scb)

1 SERVICE LIST FOR: In the matter of: MOUNTAIN STATE POWER, INC., a Delaware
2 Corporation d/b/a "Sovereign Energy Partners, Inc.," an unincorporated business and "Sovereign
Energy International"

3 MOUNTAIN STATE POWER, INC.
4 7702 E Doubletree Ranch Rd. Suite 300
5 Scottsdale, AZ 85258
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 COMMISSIONERS

4 GARY PIERCE, Chairman
5 BOB STUMP
6 SANDRA D. KENNEDY
7 PAUL NEWMAN
8 BRENDA BURNS

9 In the matter of:)
10 MOUNTAIN STATE POWER, INC., a Delaware)
11 Corporation d/b/a "Sovereign Energy Partners,)
12 Inc.," an unincorporated business and "Sovereign)
13 Energy International")
14 Respondent.)

DOCKET NO. S-20831A-12-0010

**NOTICE OF FILING OF PROPOSED
OPEN MEETING AGENDA ITEM**

15 Pursuant to A.A.C. R14-4-303, you are hereby notified that the attached: Order To Cease
16 And Desist And Order For Administrative Penalties was filed with the Arizona Corporation
17 Commission's Docket Control.

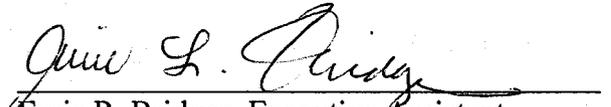
18 Dated: 7/27/12

19 By: 
20 Steven C. Briggs, Enforcement Attorney

21 I hereby certify that I have this day served the foregoing document on all parties of record
22 in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

23 MOUNTAIN STATE POWER, INC.
24 7702 E Doubletree Ranch Rd. Suite 300
25 Scottsdale, AZ 85258
26 Respondent/Attorney for Respondent

Dated: 7/27/12

By: 
Emie R. Bridges, Executive Assistant