

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                        |   |                                   |
|------------------------|---|-----------------------------------|
| ROSETON OL, LLC and    | § |                                   |
| DANSKAMMER OL, LLC,    | § | No. 401, 2011                     |
|                        | § |                                   |
| Plaintiffs-Below,      | § |                                   |
| Appellants,            | § | Court Below: Court of Chancery of |
|                        | § | the State of Delaware             |
| v.                     | § |                                   |
|                        | § | C. A. No. 6689                    |
| DYNEGY HOLDINGS, INC., | § |                                   |
|                        | § |                                   |
| Defendant-Below,       | § |                                   |
| Appellee.              | § |                                   |

Submitted: August 4, 2011

Decided: August 5, 2011

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 5<sup>th</sup> day of August 2011, it appears to the Court that:

1. The plaintiffs-below appellants, Roseton OL, LLC and Danskammer OL, LLC (collectively, “PSEG”), petitioned this Court, pursuant to Supreme Court Rule 42, to accept an interlocutory appeal from the Court of Chancery’s July 29, 2011 Opinion denying PSEG’s Motion for a Temporary Restraining Order (“TRO”). While PSEG’s certification application was pending before the Court of Chancery, PSEG filed a Notice of Appeal in this Court, together with Motions for Expedited Review, for an Injunction Pending Appeal, and for Approval of a Supersedeas Bond. By order dated August 4, 2011, the Court of Chancery denied

PSEG's applications to certify an interlocutory appeal and for an injunction pending appeal. Thereafter, PSEG filed a Supplemental Notice of Appeal from Interlocutory Order in this Court.

2. This Court has considered PSEG's application for Certification as well as their Motions for expedited review and for injunctive relief. We have also considered the responses thereto submitted by Dynegy Holdings, Inc. ("DHI"), the defendant-below appellee, the 57-page opinion of the Court of Chancery dated July 29, 2011 denying PSEG's Motion for a TRO, and the Court of Chancery's August 4, 2011 Order denying PSEG's application for certification.

3. In the Court of Chancery, PSEG sought to enjoin DHI from consummating an internal corporate reorganization. In that proposed reorganization transaction, several physical assets owned by existing DHI subsidiaries would be transferred to newly-created "bankruptcy remote" DHI subsidiaries. In conjunction with that reorganization, DHI would also refinance its existing credit facilities by causing the newly-created DHI subsidiaries to raise an additional \$1.7 billion of new secured financing. PSEG claimed that that transaction would violate DHI's contractual obligations to PSEG and the Delaware Uniform Fraudulent Transfers Act.<sup>1</sup>

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<sup>1</sup> 12 *Del. C.* §§ 4301-4311.

4. In its well-written July 29, 2011 Opinion,<sup>2</sup> the Court of Chancery determined that PSEG had failed to show both a probability of success on the merits of their breach of contract and fraudulent transfer claims, and the likelihood of imminent irreparable harm absent a grant of injunctive relief.

5. On August 5, 2011, DHI notified this Court that the restructuring transaction that PSEG sought to enjoin had closed during the late afternoon of August 4, 2011. DHI also informed this Court that as of 9:00 a.m. on August 5, 2011, the only remaining step in the refinancing plan not yet completed was the formal funding of the loans thereunder. At about 12:30 p.m. on August 5, 2011, shortly before the entry of this Order, DHI notified this Court that the latter aspect of the refinancing plan had been consummated.

6. Applications for interlocutory review are addressed to this Court's sound discretion. This Court has conferred and considered the submissions of the parties. In the exercise of its discretion, this Court has concluded that PSEG's Application for Certification of an Interlocutory Appeal should be refused for failure to satisfy the criteria of Supreme Court Rule 42, and that their motions to expedite and for injunctive relief should be denied for lack of jurisdiction and as moot.

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<sup>2</sup> *Roseton OL, LLC v. Dynegy Holdings, Inc.*, C.A. No. 6689, Slip op. at 2 (Del. Ch. July 29, 2011).

NOW, THEREFORE, IT IS HEREBY ORDERED, that PSEG's Application to Certify an Interlocutory Appeal from the July 29, 2011 decision of the Court of Chancery is REFUSED, and PSEG's Motions for Expedited Review, for Injunction Pending Appeal, and for Approval of a Supersedeas Bond are DENIED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice