

Freedom Logistics, LLC d/b/a Freedom Energy Logistics

**Petition for Authorization Pursuant to RSA 362-A:2-A, II
for a Purchase of LEEPA Output by the Private Sector**

Docket No. DE 15-068

**FEL'S OBJECTION EVERSOURCE'S
MOTION FOR RECONSIDERATION OF ORDER NO. 25,801**

NOW COMES Freedom Logistics, LLC d/b/a Freedom Energy Logistics ("FEL") by its attorney, and hereby objects to Eversource's Motion for Reconsideration of Order No. 25,801 ("Motion")¹, and in support hereof, says as follows:

I. STANDARD FOR REVIEW

1. The applicable standard of review for a motion to dismiss is that the Court must "assume all facts pleaded in the plaintiff's writ are true, and we construe all reasonable inferences drawn from those facts in the plaintiff's favor." *Rayeski v. Gunstock Area*, 146 N.H. 495, 496 (2001).

2. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 5.

II. ISSUES RAISED IN EVERSOURCE MOTION FOR RECONSIDERATION

3. Eversource first contends that "FEL ha[s] not provided any information that would permit the Commission to enter an order on wheeling in accordance with RSA 362-A:2-a, III...". *Eversource Motion for Reconsideration* at 3.

4. Second, Eversource contends that FEL's request that the Commission order Eversource to transmit and deliver power at no cost to FEL or Fiske ignored the fact that Eversource already has Commission-approved rates and charges for the transmission and delivery of power in its delivery service tariff. *Id.*

5. Third, Eversource contends that FEL has still provided no justification for requiring Eversource to wheel and transmit power at no cost under RSA 362-A:2-a. *Id.* at 5.

6. Fourth, Eversource contends that FEL had requested that Eversource wheel and transmit power at no cost without justifying such a request under Eversource's tariff, RSA

¹ Eversource's Motion was filed in violation of the Stay issued on July 14, 2015.

362-A:2-a, or under the only other statute Eversource believed could be at issue, RSA 378:18. Moreover, Eversource contends that “[t]here is no argument that the statutes conflict and FEL's request remains deficient in this regard.” *Id.* at 5.

III. ARGUMENT

A. The Commission can reasonably draw inferences from FEL’s Petition and pre-filed testimony that the proposed FEL/Fiske transaction meets the requirements of RSA 362-A:2-a, III.

7. Eversource first contends that “FEL ha[s] not provided any information that would permit the Commission to enter an order on wheeling in accordance with RSA 362-A:2-a, III...”.

8. RSA 362-A:2-a, III provides as follows:

III. Before ordering an electric utility to wheel power from a limited electric producer or before approving any agreement for the wheeling of power, the public utilities commission must find that such an order or agreement:

- (a) Is not likely to result in a reasonably ascertainable uncompensated loss for any party affected by the wheeling transaction.
- (b) Will not place an undue burden on any party affected by the wheeling transaction.
- (c) Will not unreasonably impair the reliability of the electric utility wheeling the power.
- (d) Will not impair the ability of the franchised electric utility wheeling the power to render adequate service to its customers.

9. Fiske Hydro has recently been awarded a \$225,000 grant by the New Hampshire Public Utilities Commission to increase its generating capacity to 535 kW. Eversource has a peak demand on its electrical system of approximately 1800 MW or 1,800,000 kW. Accordingly, Fiske Hydro comprises approximately or .03 percent of Eversource’s peak demand. Moreover, FEL intends to purchase only 2 per cent (%) of Fiske’s hourly output, or 0.0006 per cent (%) of Eversource’s peak demand.

10. Moreover, “the electrical loads at each point on the PSNH transmission and distribution system will not change as a result of the transmission of electricity from Fiske Hydro and delivery to FEL.” *FEL Prefiled Testimony* at 4.

11. Accordingly, for the purpose of evaluating a motion to dismiss, the Commission can reasonably draw inferences that the proposed FEL/Fiske transaction “will not place an undue

burden on any party affected by the wheeling transaction,” “will not unreasonably impair the reliability of the electric utility wheeling the power;” and “will not impair the ability of the franchised electric utility wheeling the power to render adequate service to its customers.”

12. Furthermore, the FEL/Fiske transaction will not result in a reasonably ascertainable uncompensated loss for any party affected by the wheeling transaction. As previously noted in FEL’s Objection to Eversource’s Motion to Dismiss and elsewhere, PSNH will not incur any costs as a result of the wheeling transaction. See, e.g., ¶ 13 below.

13. Eversource has repeatedly contended that costs are incurred. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 5.

B . Eversource’s Commission-approved rates and charges for the transmission and delivery of power in its delivery service tariff are expressly not applicable to the FEL/Fiske transaction.

14. Secondly, Eversource contends that FEL's request that the Commission order Eversource to transmit and deliver power at no cost to FEL or Fiske ignored the fact that Eversource already has Commission-approved rates and charges for the transmission and delivery of power in its delivery service tariff. *Eversource Motion for Reconsideration* at 3.

15. Eversource is wrong. Commission-approved rates and charges for the transmission and delivery of power in its delivery service tariff only apply to either Eversource itself as a Default Service provider, or to a “Supplier which as “[a]ny entity registered with the Commission and authorized by the Commission to supply electricity to retail users of electricity in the state of New Hampshire.” *Eversource Delivery Tariff* at ¶2. p. 7. Accordingly, Eversource’s Commission-approved rates and charges for the transmission and delivery of power in its delivery service tariff are expressly not applicable to the FEL/Fiske transaction.

Additionally, the Commission, in its denial of Eversource’s Motion to Dismiss, acknowledged FEL’s position on this point:

Finally, FEL claims the tariff is “inapplicable” because it is “predicated on the flow of electricity from ISO-NE load assets ... through Regional Transmission Service and Local Transmission Service ... to the Eversource distribution system [which] system is designed for a one-way flow of electricity from central stations

to dispersed end users.” Objection at 8. FEL argues its proposal, by contrast, is an “inward flow of electricity to end users [which] will off-set a portion of the out-flow thereby reducing the need for transmission and distribution investment.” *Id.*

Order No. 25, 801 at 6.

C. Eversource’s repeated contention that FEL has still provided no justification for requiring Eversource to wheel and transmit power at no cost under RSA 362-A:2-a is patently wrong.

16. In its prefiled testimony, FEL states the following:

As an abstract proposition, and in accordance with applicable law, FEL will pay Eversource for any costs determined by the Commission, net of locational value resulting from avoided transmission and distribution costs and avoided line losses, incurred in wheeling and delivering the Fiske Hydro electrical output to FEL’s meter. In this regard, it should be noted that Fiske Hydro does presently not pay any wheeling or transmission costs to Eversource in connection with the sale of the entire output of the Fiske Hydro Project to Eversource for resale by PSNH to ISO-NE. This appears to be a highly appropriate arrangement because Fiske Hydro, in return, is not compensated for any transmission or distribution costs avoided by Eversource as a result of Fiske’s injection of electricity at the tail-end of Eversource’s distribution system. This circumstance effectively reduces the present loads experienced by Eversource on its transmission and distribution system and, therefore its costs.

The electrical loads at each point on the PSNH transmission and distribution system will not change as a result of the transmission of electricity from Fiske Hydro and delivery to FEL. Accordingly, not only are there no incremental costs imposed on PSNH as a result of the transmission of electricity from Fiske and delivery to FEL, there are avoided costs.

Testimony and Exhibits of August G. Fromuth, June 15, 2015 (Emphasis added).

D. Eversource’s contention that FEL’s request remains deficient because it did not request wheeling and transmission under RSA 378:18 is completely without merit.

17. Eversource’s fourth and last argument is that FEL had requested that Eversource wheel and transmit power at no cost without justifying such a request under Eversource’s tariff, RSA 362-A:2-a, or under the only other statute Eversource believed could be at issue, RSA 378:18. Moreover, Eversource contends that “[t]here is no argument that the statutes conflict and FEL’s request remains deficient in this regard.” *Eversource Motion for Reconsideration* at 5.

18. FEL seeks to transmit and deliver power pursuant to RSA 362-A:2-a. FEL has not sought to vary the terms of Everource's Tariff pursuant to RSA 378:18. In this regard, Eversource's recently contrived argument that RSA 362-A:2-a conflicts with RSA 378:18 was not raised by PSNH in a 1995 Commission ruling declaring that RSA 362-A:2-a is a valid exercise of state police powers... . *Re Cabletron Systems, Inc.*, DR 95-095, Order No. 21,850 (October 3, 1995).

IV. CONCLUSION

WHEREFORE, FEL respectfully requests that the Commission:

- A. Deny Eversource's Motion for Reconsideration;
- B. Schedule Oral Argument on the Motion and Objection; and
- B. Order such further relief as may be just and equitable.

Respectfully Submitted,
Freedom Logistics, LLC d/b/a
Freedom Energy Logistics
by its Attorney,

Dated: August 9, 2015

/s/ James T. Rodier

James T. Rodier, Esq.
1465 Woodbury Ave., No. 303
Portsmouth, NH 03801-1918
603-559-9987
jrodier@mbtu-co2.com

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Objection to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

/s/ James T. Rodier