

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 14-305

**FREEDOM LOGISTICS, LLC d/b/a FREEDOM ENERGY LOGISTICS
PETITION ON BEHALF OF CIAOBRO ENERGY, LLC FOR A
DECLARATORY RULING REGARDING RULE PUC 2002.05**

Petition to Intervene on Behalf of Texas Retail Energy, LLC

NOW COMES Texas Retail Energy, LLC (“TRE”) and, pursuant to RSA 541-A:32 and N.H. Admin. R. Rule Puc 203.17, respectfully petition the New Hampshire Public Utilities Commission (the “Commission”) for intervention as a full party in the above-captioned proceeding. In support of this petition, TRE states as follows:

1. On October 30, 2014, Freedom Logistics, doing business as Freedom Energy Logistics (“FEL”), filed a petition for declaratory ruling pursuant to N.H. Code Admin. Rules Puc 207.01, on behalf of its client, Cianbro Energy, LLC (“Cianbro Energy”), regarding the application of Puc 2002.05 to Cianbro Energy and its parent company, the Cianbro Company (“Cianbro Company”). *See* Petition on Behalf of Cianbro Energy, LLC for Declaratory Ruling Regarding Rule PUC 2002.05 (“Declaratory Ruling Petition”), October 30, 2014. In its Declaratory Ruling Petition, FEL sought a declaration from the Commission that it was not required to register with the Commission as a Competitive Electric Power Supplier (“CEPS”).

2. The Commission opened this Docket on November 5, 2014 with its Order of Notice. *See* Order of Notice (November 5, 2014) at 1. The Order of Notice set a December 2, 2014 prehearing conference, “at which each party will provide a preliminary statement of its position with regarding the petition and any of the issues set forth in N.H. Code Admin. Rules Puc 203.15”. Order of Notice at 2. The Commission further ordered that, “immediately following the prehearing conference, FEL, the Staff of the Commission, and any intervenors hold

a technical session to review the petition and allow FEL to provide any amendments or updates to its filing.”

3. The Order of Notice established an intervention petition submission deadline for November 26, 2014. Accordingly, this Petition is timely filed.

4. The statutory standards for intervention are set forth in RSA 541-A:32, I and II. First, a petition *must* be granted if the petitioner states facts demonstrating how its rights, duties, privileges, immunities or other substantial interests maybe affected by the proceeding (or the petition qualifies under any provision of the law) and the interests of justice and orderly and prompt conduct of the proceedings would not be impaired by allowing intervention. *See* RSA 541-A:32 I(b) and (c); *see also* Order of Notice at 3. Second, the Commission *may* grant a petition to intervene “at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly conduct of the proceedings.” RSA 541-A:32, II; *see also* N.H. Admin. R. Rule Puc 203.1 (requiring the Commission to grant one or more petitions to intervene in accordance with the standards of RSA 541A:32).

5. For the reasons presented below, TRE meets the foregoing mandatory and discretionary intervention standards.

6. TRE is subject to the jurisdiction of the Commission and is registered as a CEPS in New Hampshire. TRE’s business address is 2001 SE 10th Street, Bentonville, Arkansas 72716-0550. TRE is a wholly-owned subsidiary of Wal-Mart Stores, Inc. (“Walmart”) and supplies electricity to commercial and industrial facilities that are part of Walmart’s family in New Hampshire. Walmart is a large retailer with its offices located at 2001 SE 10th Street, Bentonville, Arkansas 72716-0550. Walmart has 31 retail facilities in New Hampshire. These

facilities include Supercenters, Sam's Clubs, distribution centers, and gas stations. TRE supplies electricity to 29 of these facilities in New Hampshire.

7. As a CEPS, TRE is required to re-register with the Commission every 5 years by filing a renewal application. TRE is further required to comply with the renewable portfolio standard ("RPS") requirements under RSA 362-F, as this obligation applies to every "provider of electricity" as defined in RSA 374-F:2, II. As a CEPS, TRE is also required to comply with additional compliance rules and reporting requirements under the New Hampshire Code. *See also* N.H. Admin. R. Rule Puc 2500. Finally, TRE is required—as a CEPS, electric service broker or aggregator—to comply with the requirement to disclose environmental characteristics of the electricity it sells to retail customers under Commission Order No. 25,264.

8. In its Declaratory Ruling Petition, FEL asserts that Cianbro Energy provides electricity to its parent, Cianbro Company, in a number of New England states. Cianbro Energy and Cianbro Company are both members of the New England Power Pool ("NEPOOL") and ISO New England ("ISO-NE"). Declaratory Ruling Petition at ¶¶ 1-2. Cianbro Energy is a Market Participant End User and Cianbro Company is a Governance-Only member. Both Cianbro Energy and Cianbro Company are Members of the End User Sector. *Id.* However, as a Market Participant End User, Cianbro Energy is not a member of the Supplier Sector at NEPOOL. According to the Declaratory Ruling Petition, Cianbro Energy claims it ceased supplying electricity to Cianbro Company in New Hampshire in 2014, although Commission Staff has advised FEL that "it continue[s] to believe that Cianbro Energy should have registered as a competitive electric power supplier". Order of Notice at 1-2; Declaratory Ruling Petition at ¶ 3. FEL argues that Cianbro Company—or any other end user—is entitled to purchase electricity from an ISO-NE directly without relying on an intermediary such as Cianbro Energy and the use

of an intermediary is “merely an intra-corporate accounting mechanism so that the books of Cianbro Corporation are handled in the same manner as other states where Cianbro Energy needs and does have a retail license”. Declaratory Ruling Petition at ¶¶ 8-9. FEL further argues that Cianbro Energy—as a Market Participant End User—was not required at any time to have been registered as a CEPS. Finally, FEL argues that “Staff’s position is extreme in that it would subject Cianbro Energy to regulation as a CEPS but not as a public utility” and therefore, “Cianbro Energy should not have been required to obtain a CEPS license in order to supply electricity to its parent, Cianbro Corporation.” *Id.* at ¶ 11.

9. TRE is registered as a CEPS in New Hampshire and has been since June 1, 2012. As a Walmart wholly-owned subsidiary—and CEPS—whose sole purpose is to supply Walmart’s commercial and industrial facilities with electricity in New Hampshire, it’s “rights, duties, privileges, immunities or substantial interests” will be directly affected by any decision considering, defining and/or interpreting a CEPS under Rule Puc 2002.05, particularly where the petitioner is arguing that it is not required to register as a CEPS because it was only providing electricity to its parent company and is therefore not an electric supplier.

10. TRE’s interest in the outcome of this proceeding will not be adequately represented by any other party, nor will TRE’s participation delay this proceeding as TRE does not request any changes to the Schedule in this Docket.

11. TRE timely requests intervention in this proceeding.

12. The interests of justice and the orderly and prompt conduct of this proceeding will not be impaired by the grant of TRE’s petition.

13. TRE has participated in other dockets, including DM 12-086. The Commission has allowed Walmart to participate in other dockets and granted Walmart's Petition to Intervene in DE 08-120 and DE 07-106, which both involved "CORE" energy efficiency programs.

14. A copy of this petition to intervene in this proceeding has been served all on parties to this proceeding. Copies of all notices, orders or pleadings in this proceeding should be served on:

Meshach Y. Rhoades, Esq.
Greenberg Traurig
1200 17th Street, Suite 2400
Denver, Colorado 80203
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In addition to the undersigned counsel, the name, address and telephone number of TRE's representatives upon whom all notices, pleadings, correspondence and other documents regarding the above-captioned proceeding should be served is the following:

Chris Hendrix
Texas Retail Energy, LLC
2001 SE Tenth Street
Bentonville, AR 72716-0550
chris.hendrix@texasretailenergy.com

WHEREFORE, for the reasons set forth above, TRE requests that the Commission grant this timely Petition to Intervene and permit TRE to participate in this proceeding with full rights as a party.

Dated: November 26, 2014

Respectfully submitted,



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*(Original on file at offices of Greenberg Traurig,
LLP, pursuant to C.R.C.P. 121, § 1-26)*

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of November, 2014, a true and correct copy of the above and foregoing **PETITION TO INTERVENE ON BEHALF OF TEXAS RETAIL ENERGY, LLC** was served upon the following as indicated below:

Executive Director	<u>Executive.Director@puc.nh.gov</u>	NHPUC
Amanda Noonan	<u>Amanda.noonan@puc.nh.gov</u>	NHPUC
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/s/ Julie Eaton

