

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 14-305

**FREEDOM LOGISTICS, LLC, d/b/a FREEDOM ENERGY LOGISTICS
acting on behalf of its client Cianbro Energy, LLC and on behalf of Cianbro Corporation**

MOTION FOR REHEARING OF ORDER NO. 25,775

NOW COMES Freedom Logistics, LLC, d/b/a Freedom Energy Logistics (FEL) acting on behalf of its client Cianbro Energy, LLC ("Cianbro Energy") and on behalf of Cianbro Corporation ("Cianbro Corporation"), the owner of Cianbro Energy, and respectfully submits this Motion for Rehearing of Order No. 25,775 (April 8, 2015), and in support hereof, FEL says as follows:

INTRODUCTION

1. Subsequent to an evidentiary hearing held on March 12, 2015, the Commission issued Order No. 25,775 on April 8, 2015 which declared that (1) Cianbro Energy operated as a competitive electric power supplier in New Hampshire between April 5, 2011, and May 5, 2014, and as such was required to have been registered with the Commission during that time period; and (2) that Cianbro Energy as a competitive electric power supplier, was a "provider of electricity" under RSA 362-F:2, XIV, and as such was and is required to comply with renewable portfolio standard requirements, with respect to the time period from April 5, 2011 through May 5, 2014.

2. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when the motion states good reason for such relief. Pursuant to RSA 541:4 "[s]uch motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable."

3. An Order is unreasonable if findings of fact are not supported by the record.

4. Order No. 25,775 appears to be based upon the following findings of fact or erroneous rulings by the Commission:

A. "We find that the intent of the amended CEPS definition in the current rules is clear and its scope is broad enough to cover such affiliated suppliers." Order at 7.

B. “The fact that any of the end user affiliates could have purchased electricity directly from the ISO New England spot market without registering as a CEPS or complying with the RPS under our precedent does not relieve its affiliated supplier from having to comply with applicable laws and rules, once the business decision is made to purchase the electricity through an affiliated intermediary.” *Id.* at 7, 8.

C. “It is also an important objective of our regulation that similarly-situated market participants be treated consistently and fairly. We find no meaningful distinction between the market activities of Cianbro Energy in selling electricity to its affiliated end user during the 2011-2014 timeframe and those of other affiliated suppliers that were registered with the Commission and complied with RPS requirements during the same general period.” *Id.* at 7, 8.

D. “In this case, FEL's request fails to meet either prong of the "public interest" standard set forth in Puc 201.05(b). It has not proposed an alternative method of satisfying the purpose of the CEPS registration rules and related RPS compliance requirements, nor can it credibly maintain that compliance would have been onerous or inapplicable given that similarly-situated companies were able to comply with the requirements during the same general time period. We therefore deny the request for a retroactive rule waiver.” *Id.* at 8.

ARGUMENT

5. Contrary to the Commission’s finding, there is no basis in the record of this proceeding for the Commission to have found that the intent of the amended CEPS definition in the current rules is clear.

6. Chairman Honigberg stated that he didn’t know why the change was made: “And, in all honesty, I’m trying to -- I don’t know why that change was made.” Transcript at 17. The Staff similarly stated that “[i]t’s not entirely clear what the reason for those amendments were, to be perfectly honest with you.” Transcript at 27.

7. Accordingly, the Commission’s finding “that the intent of the amended CEPS definition in the current rules is clear” is not supported by the record, and therefore is erroneous.

8. Contrary to the Commission’s finding, there is no basis in the record of this proceeding for the Commission to have found that, with respect to New Hampshire, Cianbro made a “business decision” to purchase electricity through an affiliated intermediary.”

9. Counsel for Cianbro stated that “what happened here, with the benefit of hindsight, certainly, there would not have been a middleman in this case with Cianbro. But it was just done

sort of inadvertently, unintentionally.” Transcript at 8. Therefore, no “business decision” was made by Cianbro to purchase electricity through an affiliated intermediary.

10. Accordingly, the Commission’s finding that “Cianbro made a “business decision” to purchase electricity through an affiliated intermediary is not supported by the record, and therefore is erroneous.

11. *Contrary to the Commission’s finding, the Commission’s denial of Cianbro Energy’s request for a waiver from application of the CEPS registration rules was unreasonable because those rules are inapplicable to Cianbro Energy given its sale of electricity to its owner.*

12. Cianbro Energy is a single member limited liability corporation (LLC). The single member is Cianbro Energy’s parent company, Cianbro Corporation. Transcript at 6.

13. In stark contrast, 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. See TRE Petition to Intervene at 2, 3.

14. The fact of the matter is that there are six (6) corporate layers between Wal-Mart Stores, Inc. and Texas Retail Energy. See, TRE Response to Staff Questions and Clarifications, Docket No. 12-086. TRE is not selling directly to its parent as is the case with Cianbro Energy.

15. Moreover, the record in this proceeding clearly establishes that the purpose of the CEPS rules is “consumer protection:”

CHAIRMAN HONIGBERG: And none of those regulations can have anything to do with the prices that those CEPSs charge, correct?

MR. RODIER: That's correct. That's excluding price regulation. You're exactly correct.

CHAIRMAN HONIGBERG: It's almost all consumer protection, is it not?

MR. RODIER: And, you know, that's my point. It's consumer protection. Does Cianbro Corporation, as large as they are, need protection from Cianbro Energy? I don't think so.

Transcript at 15, 16.

16. Accordingly, the Commission's denial of Cianbro Energy's request for a waiver from application of the CEPS registration rules was unreasonable because those rules are inapplicable to Cianbro Energy given its sale of electricity directly to its owner. Cianbro Corporation, most definitely does not need protection from an entity that it owns and fully controls. The CEPS rules are inapplicable to this situation.

17. *Contrary to the Commission's finding, there was in fact a meaningful distinction between the market activities of Cianbro Energy in selling electricity to its affiliated end user during the 2011-2014 timeframe and those of other affiliated suppliers that were registered with the Commission.*

17. In its Order, the Commission ruled that “[i]t is also an important objective of our regulation that similarly-situated market participants be treated consistently and fairly.”

18. At the hearing, TRE explained that:

“ ...we registered as Texas Retail Energy. So, like Cianbro Energy, we're a single member LLC, to supply energy to Walmart Stores, Sam's Clubs, and our warehouses, here in New Hampshire and in the rest of New England. When we registered at ISO-New England, it was ISO-New England's viewpoint that we should register as an "other supplier". So, that's why we're registered in the supplier segment. No other reason than that.

Likewise, when we registered here in New Hampshire, so, we did New Hampshire last in our kind of rollout of New England in 2012. And, after reading the rules and talking to the Commission Staff, that's why we registered as a CEPS at that time.

Transcript at 15, 16.

19. Thus, it appears that TRE registered as a CEPS with the Commission rather than registered as a Market Participant End User (“MPEU”) at ISO-New England “after reading the Commission's” rules and talking to the Commission Staff.”

20. At the hearing, Chairman Honigberg sought a clarification from TRE on its position on the issues in the proceeding. TRE responded as follows:

MR. HENDRIX: Well, we intervened because we feel like we're similarly situated. So, we feel like, I mean, kind of in a bigger scale, but we, since we serve more facilities in New Hampshire, that you could kind of replace Cianbro Energy with us. And, it seems like there was a disparate treatment between the two parties. So, that's why we intervened in the case.

Likewise, from the -- I mean, the discussion that was going on about the Union Leader, it

seems like there's a gap there in the rules of "who does the RPS apply to?" So, should it apply to all sales or should it apply to some that are carved out.

CHAIRMAN HONIGBERG: Well, I think what Mr. Wiesner said is that whoever would be selling to the Union Leaders of the world have to comply -- would have to comply. So, rather than get it in multiple locations or multiple places within the series of transactions, you do it once, you get it there.

MR. HENDRIX: But my viewpoint would be, is if we changed our registration here to be an aggregator for Walmart, then the Walmart Stores themselves would be buying directly from ISO New England.

Transcript at 38 through 40.

21. The take-away here is that TRE's objective in this proceeding is not to make Cianbro Energy look like TRE, but rather to have TRE look like the "Union Leaders of the world." TRE was simply not made aware of the fact that endusers in New Hampshire may purchase directly from ISO-NE and thereby avoid the requirement to register as a CEPs. Stated differently, TRE's underlying interest in this proceeding appears to be how to obtain information on how to bypass the RPS requirements like the Union Leader, and other New Hampshire ISO-NE endusers.

Accordingly, there would be nothing unfair about treating Cianbro Energy differently from TRE.

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

Dated: May 8, 2015

/s/ James T. Rodier

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Certification of Service

Pursuant to Rules Puc 203.02(2) and Puc 203.11, I have served copy of this petition on each person identified on the Commission's service list for this docket.

/s/ James T. Rodier