

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

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

MOTION TO DISMISS AND MOTION TO STAY

Pursuant to New Hampshire Code of Administrative Rules Puc 203.05 and 203.07, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) hereby respectfully moves to dismiss the above-referenced petition. Further, in light of this motion, Eversource moves that the Commission stay or suspend the procedural schedule in this docket pending a ruling on the motion to dismiss. Eversource has been authorized to state that Liberty Utilities (Granite State Electric) Corp. and Unitil Energy Systems, Inc. concur in the relief sought in this motion. In support of this motion, Eversource says the following:

1. On December 2, 2014, Freedom Logistics, LLC d/b/a Freedom Energy Logistics (“FEL”) filed a petition for a declaratory ruling with the Commission. That filing was docketed as Docket No. DM 14-346. In that submission, FEL sought a declaration from the Commission that the Commission’s decision in *Cabletron Systems*, Order No. 21,850 (October 3, 1995) which opined upon the constitutionality of RSA 362-A:2-a, remained “good law” and that a limited producer, as defined in RSA chapter 362-A, could sell power directly to retail end users.

2. By Order No. 25,744 (December 29, 2014) the Commission dismissed FEL’s petition and stated:

The Petition raises complex issues of interpretation under the federal constitution, state statutes, and Commission rules. It does not, however, include factual representations describing any specific proposed transaction, nor does it identify any particular power producer, customer location, retail meter, interconnecting utility, or distribution company involved in, or affected by any proposed retail sales transaction.

Order No. 25,744 (December 29, 2014) at 1-2. The Commission noted that the petition essentially sought an advisory opinion on various “complicated legal and regulatory issues that may in fact be entirely hypothetical.” *Id.* at 2. Accordingly, the Commission dismissed that petition, without prejudice. *Id.* By a letter dated December 31, 2014, FEL informed the Commission that it intended to submit a new petition.

3. On February 17, 2015, FEL submitted a new petition – this time seeking a ruling relative to its purchase of electrical power directly from the Fiske Hydro (“Fiske”) generating station in Hinsdale, New Hampshire, for delivery to FEL’s retail service location in Auburn, New Hampshire. At the May 6, 2015 prehearing conference in this matter, the Hearings Examiner noted that the petition contained no contracts for the Commission’s review or approval pursuant to RSA 362-A:2-a. May 12, 2015 Report of Hearings Examiner at 2. A procedural schedule developed following that prehearing conference permitted FEL to file contracts by June 15, 2015. FEL made such a filing on June 15, 2015. Upon review of FEL’s June 15, 2015 submission it is apparent that it continues to be inadequate to permit the Commission to act and should, therefore, be dismissed.

4. In addition to the above, Eversource notes that the Commission issued a secretarial letter on May 8, 2015 approving a procedural schedule calling for the submission of discovery on June 29, 2015. In that it could not be known until after FEL’s June 15, 2015 submission what the potential terms of a proposal could be, Eversource could not have prepared this motion prior to that time. Given the need to wait until that submission, and the now near term date for

discovery, Eversource herein requests that the Commission stay the procedural schedule in this docket pending a ruling on this motion. In making this request, Eversource notes that the law underlying FEL's request has existed for almost 40 years, and there has been activity related to it only once - nearly 20 years ago. As such, any delay caused by a stay pending a ruling on this motion will not be disruptive, and may in fact be beneficial, because it would avoid the parties having to expend resources on a docket that might be dismissed.

5. As to the substance of the matter, Eversource notes that RSA 362-A:2-a, I provides that a limited producer, which appears to include Fiske, has authority to make certain sales, and that the Commission may authorize that limited producer make such sales. Similarly, RSA 362-A:2-a, II provides that the Commission may undertake certain actions relative to the transmission of power "upon request of a limited producer." The petitioner, FEL, is not a limited producer and the producer, Fiske, is not a party to the docket. *See* May 12, 2015 Report of Hearings Examiner at 2. In that the limited producer has not made any request of the Commission, and is not a party to the docket, Eversource questions whether the Commission may provide any relief in this docket.

6. Additionally, as to the physical locations and interconnections of the facilities involved in this proposed transaction, RSA 362-A:2-a, I provides:

The commission may authorize a limited producer, including eligible customer-generators, to sell electricity at retail, either directly or indirectly through an electricity supplier, ***within a limited geographic area*** where the purchasers of electricity from the limited producer shall not be charged a transmission tariff or rate for such sales if transmission facilities or capacity under federal jurisdiction are not used or needed for the transaction.

(emphasis added). Fiske is located in the western most area of New Hampshire, approximately 80 miles from Auburn, New Hampshire where FEL's retail meter is located. Assuming that distance qualified as a "limited geographic area," it would cover almost half the state and place

essentially all parts of New Hampshire south of Hanover within a “limited geographic area” relative to Auburn. Such a distance raises questions about whether the proposed transaction qualifies under the statute. Neither the initial petition, nor any subsequent filing, addresses this issue in any way. Allowing a transaction such as this, in light of the distance involved, would effectively read the phrase “limited geographic area” out of the statute, something the Commission may not do. *See Garand v. Town of Exeter*, 159 N.H. 136, 141 (2009) (“The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect. We also presume that the legislature does not enact unnecessary and duplicative provisions.” (quotations and citations omitted)).

7. Similarly, Eversource notes that although both Fiske and FEL both reside within Eversource’s service territory,¹ the delivering of power from Fiske to FEL relies upon the use of Eversource’s federally regulated 115 kV transmission system. While FEL’s June 15, 2015 filing references the use of Eversource’s transmission system in summary fashion, it offers no information about how the use of that system should be accounted for as part of any transaction. It appears from the language of RSA 362-A:2-a that the exemption from a transmission tariff or rate exists only when facilities under federal jurisdiction are not involved. FEL’s filings do nothing to inform or address this issue and are thus inadequate to justify any relief.

8. Aside from the physical issues left unaddressed by FEL’s filings, there are other matters relating to the contract that demonstrate that it is insufficient to justify relief from the Commission. As part of the June 15, 2015 submission, FEL includes what it labels “Summary of Terms for Delivery of Electricity by PSNH to FEL.” June 15, 2015 Submission of FEL in DE

¹ Eversource notes that FEL has proposed a potential transaction between a producer and a customer in a single utility’s service territory, but that in the future it may propose transactions crossing utility service territories. *See* Transcript of May 6, 2015 Prehearing Conference in DE 15-068 at 12. Whether and how to address proposals crossing utility territories would likely present additional substantial issues beyond those covered by this submission.

15-068 at 4. That portion of the submission begins with a statement that what FEL is describing is “an abstract proposition.” *Id.* In other words, FEL provides only an “idea” or “concept” for the Commission to consider relative to the terms of delivery by, and payment to, Eversource. It offers no contract for the wheeling and delivery of power, but only says that FEL will do what the Commission orders. RSA 362-A:2-a, however, provides that before the Commission may make any order relative to the wheeling of power, it must be able to make certain findings. *See* RSA 362-A:2-a, III. None of FEL’s submissions provide any information or argument that would permit the Commission to make the findings or conclusions required by the statute. The only “contract” provided for the Commission’s consideration is a 2 page document that provides only basic summary information about a potential agreement between FEL and Fiske, but says nothing about the role of the transmitting utility. In that the Commission has neither a contract for wheeling and delivery before it, nor the information necessary to render an order on wheeling and delivery, the Commission has no basis upon which to continue the docket. This request remains little more than the hypothetical situation that was previously dismissed by the Commission and should, for the same reasons, also be dismissed.

9. Further, and as noted in Order No. 25,744, a transaction such as the one proposed here presents other complex legal and regulatory concerns that are unaddressed by the submissions in this docket. For example, RSA 362-A:3, I provides that “The entire output of electric energy of such limited electrical energy producers, if offered for sale to the electric utility, shall be purchased by the electric public utility which serves the franchise area in which the installations of such producers are located.” Should Fiske begin selling some portion of its power to customers at retail under RSA 362-A:2-a, it will no longer be offering its entire output to Eversource. It is not clear how this transaction would affect Eversource’s obligations under state

or federal law to purchase power produced by Fiske when some portion of that power is no longer offered to Eversource. Likewise, it is not clear whether an ISO-NE registered generator, such as Fiske, is permitted to make such sales outside of the ISO administered energy and capacity markets. FEL's contract with Fiske does not address these issues.

10. Additionally, and as the Commission is aware, RSA chapter 362-A has been extensively amended in the 20 years since the *Cabletron* decision upon which FEL relies, including by the addition of provisions relating to group net metering, which did not exist in New Hampshire at that time. *See* RSA 362-A:9 and N.H. Code of Admin. Rules Chapter 900. Group net metering is, in essence, little different than what FEL is requesting here, though group net metering has a robust, existing and implemented legal and regulatory system, while FEL's proposal does not. As one example of a gap between these systems that is left unaddressed by FEL's filings, under the existing statutory system relating to group net metering the utility is entitled to make a filing with the Commission to secure cost recovery for the effect of net metering on its revenue, RSA 362-A:9, VIII, while FEL seeks a Commission order that Eversource "transmit and deliver the Fiske Hydro electrical output to FEL's s [*sic*] meter at no cost to FEL or Fiske Hydro," June 15, 2015 Submission of FEL in DE 15-068 at 5, without any explanation as to why the disparate treatment is reasonable or appropriate. While there are other issues, the above should be sufficient to demonstrate that the information provided by FEL is inadequate to support any relief.

11. As a final matter for purposes of this motion, Eversource notes that FEL's request that the Commission order Eversource to transmit and deliver power at no cost to FEL or Fiske ignores the fact that the Commission has already approved rates and charges for the transmission and delivery of power by Eversource from a supplier to a customer. Those rates and charges are

contained in Eversource's delivery service tariff and Eversource has been providing such service under that tariff since 2001. FEL is therefore essentially requesting that the Commission approve a special contract for service at rates other than those fixed by Eversource's schedules of general application. FEL, however, provides no information that would satisfy the requirements for such a special contract under RSA 378:18 and RSA 378:18-a, but merely requests that the Commission disregard any such provisions without providing any justification or reasoning for doing so.

11. In sum, the Commission dismissed FEL's prior petition because it provided insufficient information to permit the Commission to actually render any decision. The same infirmities continue to exist. FEL has added minimal detail in its new submission, but has still only provided the Commission with a concept for a potential transaction, and no information that demonstrates that the transaction actually could or would meet the requirements of the law. FEL has acknowledged that there are numerous "big issues" included within its proposal, *See* Transcript of May 6, 2015 Prehearing Conference in DE 15-068 at 12, and yet has provided nothing in its contract or other documentation that addresses or resolves those issues. Instead, FEL is apparently attempting to use the Commission's adjudicative process to vet its ideas as some sort of precursor to making a proposal that might meet the requirements of RSA chapter 362-A. *See* Transcript of May 6, 2015 Prehearing Conference in DE 15-068 at 16 (FEL noting that it is "interested in hearing what other people would have to say" about its proposal and what "their suggestions might be about how we could go about doing this."). This proposal is, as the prior one was, a hypothetical situation where the petitioner is seeking advice on how the Commission might review and decide this case. That is not a proper use of the Commission's process and this docket should be dismissed.

WHEREFORE, Eversource respectfully requests that the Commission:

- A. Grant Eversource's motion to dismiss;
- B. Stay the proceeding pending a ruling on the motion to dismiss; and
- C. Order such further relief as may be just and equitable.

Respectfully submitted,

**Public Service Company of New Hampshire d/b/a
Eversource Energy**

June 26, 2015

Date

By: 

Matthew J. Fossum
Senior Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
(603) 634-2961
Matthew.Fossum@eversource.com

CERTIFICATE OF SERVICE

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

June 26, 2015

Date



Matthew J. Fossum