

**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 TO DISMISS AND MOTION TO STAY**

NOW COMES Freedom Logistics, LLC d/b/a Freedom Energy Logistics ("FEL") by its attorney, and hereby objects to Eversource's Motion to Dismiss and Motion to Stay ("Motion"), and in support hereof, says as follows:

**INTRODUCTION**

*"Whether it's solar panels on the roof or battery storage in the basement, advanced technologies are unlocking America's energy future by literally bringing power to the people. But policies governing how these technologies connect to and interact with our nation's electricity grid are stuck in the past and, as a result, are holding back the enormous potential for these technologies to flourish..."*

U.S. Senator Angus King (I-Maine), May 6, 2105.

Not unexpectedly, Eversource has renewed its decades long effort to frustrate renewable energy transactions pursuant to RSA 362-A:2-A, II. One of the key recommendations of the 2014 New Hampshire State Energy Strategy is to "encourage distributed generation." This is the context in which FEL has stepped forward to provide the resources to underwrite the necessary litigation to finally determine in what manner RSA 362-A:2-a is to be implemented.

\*\*\*\*\*

In 1978, the New Hampshire General Court enacted the Limited Electrical Energy Producers Act (LEEPA), codified at RSA chapter 362-A, to encourage "small scale and diversified sources of supplemental electrical power to lessen the state's dependence upon other

sources which may, from time to time, be uncertain." RSA 362-A:1. In 1979, the legislature added RSA 362-A:2-a to LEEPA to further that same objective. RSA 362-A:2-a allows a facility that produces not more than 5 megawatts of power by means of renewable resources or cogeneration to sell power directly to not more than 3 end users.

In 1995, the Commission issued a declaratory ruling that RSA 362-A:2-a is a valid exercise of state police powers which is not preempted by federal law. The declaratory ruling addresses only the constitutionality of RSA 362-A:2-a, and does not authorize any particular proposed arrangement for retail wheeling. Re Cabletron Systems, Inc., DR 95-095, Order No. 21,850, 80 NH PUC 620, (October 3, 1995). It has been 36 years since the legislature enacted RSA 362-A:2-a, and 20 years since the Commission issued its Order that RSA 362-A:2-a is a valid exercise of state police powers which is not preempted by Federal law. The three utilities involved in the Motion to Dismiss in this proceeding ardently opposed the Commission's 1995 ruling. No LEEPA facility during this extended period has had any success in overcoming utility intransigence.

The Commission's Order of Notice establishes the scope of this proceeding:

FEL's filing raises, inter alia, issues related to the interpretation of RSA 362-A:2-A, II under LEEPA, and the terms and conditions of agreements and arrangements pursuant to which the electrical output of the limited electrical energy producer will be sold to the end user and wheeled by the franchised electric distribution utility from the producer to the end user.

Order of Notice at 2.

### **I. STANDARD FOR REVIEW**

1. Eversource contends in its Motion that FEL's June 15, 2015 submission "is inadequate to permit the Commission to act and should, therefore, be dismissed."

2. 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) (Emphasis added.)

3. Eversource's Motion relies on arguments such as it "questions whether the Commission may provide any relief in this docket" and "[i]t is not clear how this transaction would affect Eversource's obligations." These nebulous contentions most certainly do warrant a dismissal of FEL's filing in this proceeding and appeared to have been posed merely for sake of delay.

4. FEL has received a total of 78 Data Requests to date, a number of which are multi-part. FEL is working diligently to prepare its responses.

## **II. SUMMARY OF APPLICABLE LAW**

5. Under RSA 362-A:2-a, a facility that produces not more than 5 megawatts of power by means of renewable resources or cogeneration has the right to sell power directly to not more than three (3) end users, pursuant to agreements for the retail sale to the purchaser and for the wheeling of power by the franchised electrical public utility that are approved by the Commission as consistent with specific statutory criteria. Under LEEPA, the Commission retains the right to order the wheeling of power by the utility to the end users and to set the price and other terms for a wheeling agreement as it deems necessary, consistent with these specific criteria.

## **III. RESPONSES TO THE SEVEN ISSUES RAISED BY EVERSOURCE**

### **Argument One**

6. Eversource's first argument in support of its Motion to Dismiss is that:

"[t]he petitioner, FEL, is not a limited producer and the producer, Fiske, is not a party to the docket. 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."

Motion at 3.

7. This matter was extensively discussed on the record at the prehearing held on May 6, 2015:

HEARINGS EXAMINER: It also sounds like it's something that may be workable amongst the parties in the tech session. My expectation would be that the Staff would file a report of the tech session afterwards and could present a proposed procedural schedule in that report, as well as any other recommendations with regards to the status of Fiske and how Freedom and Fiske will function in the docket.

\*\*\*\*\*

HEARINGS EXAMINER: So, why don't you all have a conversation in the tech session and provide a recommendation as to how Fiske will participate at this point in time. And, that could always be something that is revisited at a later date, if there is difficulty, if there is a decision to not have Fiske by a party at this point, if there is difficulty getting access to data that could be revisited at another point in time as well.

Transcript at 24, 26.

8. Despite the hearing Examiner's exhortation to the parties to discuss this matter during the technical session, Eversource did not utter a word. Apparently, Eversource decided to not bring this matter up for discussion, having already decided it might make good fodder for a Motion to Dismiss.

9. Fiske plans to submit to questioning in this proceeding by any party. If the Commission determines that a useful purpose would be served by making Fiske a party to this proceeding, Fiske will be happy to comply.<sup>1</sup>

### **Argument Two**

10. Eversource's second argument in support of its Motion to Dismiss is that: 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 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.

---

<sup>1</sup> Ron McLeod, owner of Fiske Hydro, made the following statement at the prehearing conference: "I have to say I agree. We're a very small facility, very small company. I don't feel we could necessarily afford representation. We're a facility that's in the process of rebuilding. We were fortunate enough to get a grant from the PUC to do that. And, it would be very difficult for us, I imagine, I actually don't have experience with these types of petitions, but I think it would be a pretty big deal for a little tiny company. Thank you." Transcript at 23.

Motion at 3, 4.

11. RSA 362-A:2-a, I provides that:

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).

12. Eversource misreads the intent and purpose of RSA 362-A:2-a, I. Reduced to its essence, RSA 362-A:2-a, I simply provides that the Commission *may* authorize a limited producer to sell electricity within a *limited geographic area without* being required to pay a transmission rate *if transmission facilities are not used or needed*. Stated a bit differently, selling in a limited area could well mean that there are no transmission facilities used for transaction and the law simply recognizes this possibility.

13. FEL has conceded in this proceeding that Eversource's transmission system would be used by the proposed FEL/Fiske transaction.

### **Argument Three**

14. Eversource's third argument in support of its Motion to Dismiss is that FEL "offers no information about how the use of transmission system should be accounted for as part of any transaction." Motion at 4.

15. Eversource appears to have willfully turned a blind eye to FEL's pre-fled testimony which does clearly and comprehensively address this issue:

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. In this connection, the Commission should be informed by the conclusions of the very recent Maine Solar Value of Service study. . . . .

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

**Argument Four**

16. Eversource's fourth argument in support of its Motion to Dismiss is 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." Motion at 5.

17. As noted immediately above (§ 15), FEL has expressly explained why there are no net costs imposed upon PSNH by wheeling Fiske's output to FEL. Moreover, based upon long experience, FEL believes it highly unlikely that Eversource will agree to wheel and transmit Fiske's output to FEL under any reasonable terms. Accordingly, FEL has requested the Commission to order Eversource to do so.

**Argument Five**

18. Eversource's fifth argument in support of its Motion to Dismiss is that:

[s]hould 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.

Motion at 5, 6.

19. The motivation behind Eversource raising the specter that it may no longer purchase any output from Fiske if Fiske sells a small amount to FEL is a scare tactic. FEL is unaware of any fact or law that would preclude Fiske from selling a small amount of its output to FEL, and the remainder to Eversource. In any event it is highly improper to include this matter in a Motion to Dismiss based upon speculation that “[i]t is not clear how this transaction would affect Eversource's obligations under state or federal law.”

#### **Argument Six**

20. Eversource’s sixth argument in support of its Motion to Dismiss is that:

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,... without any explanation as to why the disparate treatment is reasonable or appropriate.

Motion at 6.

21. The existing statutory system relating to group net metering has no relevance to RSA 362-A:2-a, except perhaps by analogy. In any event it is highly improper to contend in a Motion to Dismiss that FEL’s filings should be dismissed because there is no “explanation as to why the disparate treatment is reasonable or appropriate.”

#### **Argument Seven**

22. Eversource’s seventh argument in support of its Motion to Dismiss is 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.

Motion at 6, 7.

23. Eversource's rates and charges in its retail Tariff which provide for the transmission and delivery of power by Eversource from a supplier to a customer are inapplicable. These rates and charges are predicted on the flow of electricity from ISO-NE load assets out through Regional Transmission Service and Local Transmission Service and down to the Eversource distribution system. This system is designed for a one-way flow of electricity from central stations to dispersed end users.

24. The FEL/Fiske envisions an inward flow of electricity to endusers. The in-flow of electricity will off-set a portion of the out-flow thereby reducing the need for transmission and distribution investment. This is most likely the reason Eversource does not require Fiske to transmission and distribution 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

#### **IV. CONCLUSION**

One of the key recommendations of the 2014 New Hampshire State Energy Strategy is to "encourage distributed generation." Central to this recommendation will be the development of policies and procedures that allow for the "two-way" flow of electricity from distributed generation to endusers.

If necessary from the perspective of the Commission, the Commission should allow FEL to revise its filings in order to provide greater clarity and specificity about the proposed Fiske/FEL transaction pursuant. FEL is currently preparing responses to 83 Data Requests.

As noted by NhSolarGarden:

[t]he Commission's authorization of the transaction at issue in this proceeding pursuant to RSA 362-A:2-A, II under LEEPA will allow smaller groups to come together and buy local power in scenarios where they do not have the space or infrastructure to allow for an onsite solar array to be built. Or in the case whereby they want to purchase a portion of the energy locally and continue with their past procurement methods, LEEPA will be that solution. In addition, this mechanism will allow for maximum savings to the energy customers that continue to be affected by volatile energy markets seen here in New Hampshire.

NhSolarGarden Petition for Intervention at ¶ 4.



WHEREFORE, FEL respectfully requests that the Commission:

- A. Deny Eversource's Motion to Dismiss;
- 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: July 6, 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](mailto: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**