

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 FOR RECONSIDERATION

Pursuant to RSA 541:3 and New Hampshire Code of Administrative Rules Puc 203.07, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) hereby respectfully moves for reconsideration of Order No. 25,801 (July 29, 2015) in the above-referenced proceeding. In support of this motion, Eversource says the following:

1. On February 17, 2015, Freedom Logistics, LLC d/b/a Freedom Energy Logistics (“FEL”) submitted a petition 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. On June 26, 2015, Eversource filed a motion to dismiss the petition on various grounds and FEL objected to that motion on July 6, 2015. By Order No. 25,801 (July 29, 2015) the Commission denied the motion to dismiss and, at the same time, ordered Fiske to enter an appearance as a full party to the docket. Eversource herein moves for reconsideration of certain conclusions included in Order No. 25,801.

2. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters

that were overlooked or mistakenly conceived by the deciding tribunal. *Id.* at 4-5. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Id.* at 5.

3. In its motion to dismiss, Eversource contended that FEL provided an “idea” or “concept” for the Commission to consider relative to the terms of delivery by, and payment to, Eversource, but no contract for the wheeling and delivery of power. Eversource Motion to Dismiss at 4-5. Further, the motion stated that although FEL agreed to abide by a Commission order on wheeling, RSA 362-A:2-a required that the Commission make certain findings before it could enter such an order, *see* RSA 362-A:2-a, III, and that none of FEL’s submissions provided any information or argument that would permit the Commission to make those findings. *Id.* In ruling upon this argument, the Commission concluded that the reasonable interpretation of RSA 362-A:2-a, II was that the Commission must either approve a wheeling agreements or that it had the right the right to order such wheeling and that the clause granting the Commission the right to order such wheeling would be superfluous if a contract were a necessary condition to approval. Order No. 25,801 at 8.

4. Eversource does not disagree with the reasoning in the order, as far as it goes, but respectfully contends that this ruling overlooked the second contention raised by Eversource – namely, that the petition and other information is insufficient to support the required findings under RSA 362-A:2-a, II and III. Eversource agrees that the absence of a contract is not, in itself, fatal to the petition. As Eversource had noted in its motion, however, FEL had not provided any information that would permit the Commission to enter an order on wheeling. Pursuant to RSA 362-A:2-a, III:

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.

Even taking all allegations and arguments in FEL's petition and other submissions as true, there is no evidence or argument that addresses the factors required in the statute and, therefore, the petition is inadequate to support the relief requested. In its objection to Eversource's motion, FEL noted only that it believed Eversource unlikely to agree to a wheeling contract and, therefore, asked that the Commission order it. FEL Objection to Motion to Dismiss at 6.

Regardless of FEL's reason for requesting that the Commission order the terms of wheeling, FEL has not provided any information that would make it possible for the Commission to make the findings required by RSA 362-A:2-a, III. Accordingly, the petition is inadequate to support relief and Eversource requests that the Commission reconsider its ruling on that issue.

5. Next, in its motion to dismiss Eversource contended 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 to Dismiss at 6-7.

Eversource noted that the request was, essentially, for approval of a special contract for service at rates other than those fixed by Eversource's schedules of general application. *Id.* at 7.

Eversource stated that if this was the case, FEL had provided no information that would satisfy the requirements for such a special contract under RSA 378:18 and RSA 378:18-a. *Id.* FEL, in

its objection, contended that Eversource's retail tariff is inapplicable to this proposal based upon FEL's conclusions relative to the manner in which electricity flows to end users. FEL Objection to Motion to Dismiss at 7-8. In its order, the Commission noted that "Eversource's last argument is that the proposed contract is inconsistent with its tariff and, in effect, is a special contract governed by RSA 378:18 and :18-a." Order No 25,801 at 9. In reaching its decision the Commission concluded that because RSA 362-A:2-a is a specific statute governing arrangements of this type, "the specific language authorizing a contract between Fiske Hydro and FEL is the exception to the general requirements requiring tariffs or approval of a special contract. Nonetheless, the fact that RSA 362-A:2-a may conflict with the other laws is not a basis for dismissal." Order No. 25,801 at 9.

6. Respectfully, the provisions of RSA 362-A:2-a that might concern "a contract between Fiske Hydro and FEL" are not the provisions with which Eversource's motion was concerned. Rather, it is with the terms of any arrangement that might determine how Eversource is compensated or otherwise covered. FEL contended in its June 15, 2015 submission that Eversource should be required to wheel and transmit power at no cost to FEL or Fiske (despite the language in RSA 362-A:2-a, II stating "The producer shall compensate the transmitter for *all* costs incurred in wheeling and delivering the current to the purchaser." (emphasis added)), and contended in its objection to Eversource's motion to dismiss that Eversource's retail tariff is inapplicable to this situation. It appears, then, that the only compensation scheme that could conceivably be applicable is one relating to special contracts. However, the Commission has now concluded that the requirements for such contracts do not apply here.¹ Again, accepting all

¹ Moreover, Eversource notes that even if this could be considered a special contract, such contracts are voluntary acts of the utility and have particular requirements that have not been satisfied here. *See, e.g.,* PART Puc 1606 and *Public Service Company of New Hampshire*, Order No. 25,748 (Dec. 31, 2014) at 5 (noting that to confirm that

allegations and arguments in FEL's filings as true, neither Eversource's retail tariff nor the requirements for special contracts would apply to this situation, and FEL has still provided no justification for requiring Eversource to wheel and transmit power at no cost under RSA 362-A:2-a. Accordingly, FEL's petition is inadequate to support relief and Eversource requests reconsideration on that ground.

7. Finally, and with respect to the Commission's conclusion that "the fact that RSA 362-A:2-a may conflict with the other laws is not a basis for dismissal," Order No. 25,801 at 9, it is not clear what the Commission intends by this conclusion and Eversource requests that the Commission reconsider it. As stated by the New Hampshire Supreme Court:

Where reasonably possible, statutes should be construed as consistent with each other. When interpreting two statutes which deal with similar subject matter, we will construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute. To the extent two statutes conflict, the more specific statute controls over the general statute.

EnergyNorth Natural Gas, Inc. v. City of Concord, 164 N.H. 14, 15 (2012) (internal citations and quotations omitted). The Commission has concluded that the statutes "may" conflict, but that such a conflict would not be a basis to dismiss, presumably because the more specific statute, RSA 362-A:2-a, would control. Inherent in the decision that a more specific statute controls over a more general one, however, is the initial conclusion that the statutes conflict.

Eversource's argument, however, was not that RSA 378:18 and RSA 362-A:2-a may or do conflict, but 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. There is no argument that the statutes conflict and FEL's request remains deficient in this regard.

conditions warrant a special contract, *the utility* must file a written statement of the customer to the special contract confirming that the tariffed rate will not meet its needs and must submit a copy of the special contract).


WHEREFORE, Eversource respectfully requests that the Commission:

- A. Grant Eversource's motion for reconsideration; and
- B. Order such further relief as may be just and equitable.

Respectfully submitted,

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


August 5, 2015
Date

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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.

August 5, 2015
Date


Matthew J. Fossum