THE STATE OF NEW HAMPSHIRE

BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. DE 15-068

PETITION FOR AUTHORIZATION PURSUANT TO RSA 362-A:2-A, II FOR A PURCHASE OF LEEPA OUTPUT BY THE PRIVATE SECTOR

REBUTTAL TESTIMONY OF RICHARD C. LABRECQUE

Q. Please state your name, position and business address.

A. My name is Richard C. Labrecque. My business address is Eversource Energy, Energy Park, 780 North Commercial Street, Manchester, New Hampshire. I am the Manager of Distributed Generation (NH) for Eversource.

Q. What are your duties and responsibilities at Eversource?

A. My duties include the administration of interconnection agreements and purchase contracts with non-utility generators.

Q. Have you previously testified before the Commission?

A. Yes. I have testified on several occasions before the Commission.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to comment on the proposal by Freedom Energy Logistics ("FEL") that Eversource be required to transmit a portion of the energy

produced by Fiske Hydro ("Fiske") in Hinsdale, NH to FEL's premises in Auburn, NH at no cost to either Fiske or to FEL.

Q. What is the legal basis of FEL's proposal?

A. While I am not a lawyer, I have read the filings in this proceeding, and, according to its petition and testimony, FEL relies on RSA 362-A:2-a, which allows a limited electric energy producer to sell its output to not more than three purchasers other than the franchised utility.

Q. Do you believe that FEL's reliance on that statute is appropriate?

A. No, I do not. FEL's reliance on RSA 362-A:2-a is misplaced since that statute took effect over 35 years ago, well before restructuring of the electric industry occurred. At that time, customers did not have the ability to select a supplier of electric energy, and suppliers could not sell electricity to retail end users. To encourage development of small power production, the legislature provided small power producers with a limited ability to sell power to retail customers and required the franchised utility to transmit the power from the producer's facility to the purchaser's facility.

Since that statute became effective, however, electric industry restructuring occurred pursuant to RSA 374-F. Under restructuring, assuming a power producer becomes a competitive supplier, it has the ability to sell to any number of customers and the utility is required to deliver that power. Similarly, I would also note that FEL relies upon the Commission's *Cabletron* decision for support that RSA 362-A:2-a is still "good law."

Cabletron was issued in 1995, while RSA chapter 374-F was enacted in 1996. Therefore, the law upon which FEL is relying has been surpassed by the subsequent passage of the Electric Utility Restructuring law.

Under the restructured framework, suppliers can sell to as many end users as they desire, and suppliers are not charged for wheeling service. What FEL's proposal fails to recognize is that the *end user* or retail customer pays for the delivery of that power through Commission approved tariffs.

Because the regulatory framework is already in existence, there is no need for the Commission to render a decision on FEL's request. Assuming it complies with the relevant requirements, FEL can currently enter into an agreement with Fiske and purchase some or all of the output without any action from the Commission. Eversource is required to deliver power to FEL's premises and charge FEL its tariff-based rates that have been approved by the Commission.

Q. Please describe the current arrangements by which Fiske sells power to Eversource and FEL receives service from Eversource.

A. Fiske currently sells 100% of its output (energy and capacity) to Eversource. The hydro output is registered as a "Generator Asset" in the ISO-NE market systems and Eversource is the registered "Asset Owner." As such, Eversource receives payment from ISO-NE based on the relevant market prices for the hydro power. These same exact market prices

are the basis of Eversource's payment to Fiske. FEL is currently billed by Eversource for 100% of its electricity consumed at the approved tariff charge (Rate G).

Q. Assuming that FEL seeks to pursue its proposal under RSA 362-A:2-a, could you please describe your understanding of the proposed transaction?

A. Under the proposal, Eversource would continue to receive 100% of the output from Fiske, however, Eversource would only pay the owner of Fiske for 98% of the ISO-NE market value. Eversource would be required to determine the kilowatt-hour (kWh) quantity associated with the remaining 2% and reduce FEL's billable kWh under Rate G by that amount. FEL has suggested that all kWh-based rate components would be reduced, but at other times has seemed to say it would only be the energy charge. *See* Responses Attached as Exhibits RCL-1 and RCL-2. Because the testimony from FEL refers to bills to FEL being based on "total net usage" I will assume the transaction is intended to cover all billable kWh.

Q. What effects would this transaction have on the parties involved?

A. Fiske would receive a higher level of compensation for the 2% sold to FEL than it would by selling that power to Eversource. According to FEL's testimony, the compensation would be 50% higher than the compensation Fiske would have received by selling this quantity of power to Eversource. FEL would receive an Eversource bill that has been reduced by the quantity purchased from Fiske. The level of savings for FEL would be based on the extent to which the retail rate (the sum of all kWh-based charges under Rate

G) exceeds the payment FEL must make to Fiske (150% of the ISO-NE real-time market price).

Q. What effect would this have on Eversource customers?

A. As noted in the prior responses, Eversource would receive reduced Rate G revenues from FEL. Under the proposal, all kWh-based charges are affected. This would reduce the collection of charges meant to recover the necessary costs of owning, operating, maintaining and restoring the transmission and distribution system. Also, it would reduce the recovery of stranded costs, the collection of the systems benefits charge and it would lower the collection of the electricity consumption tax.

Q. How would this transaction affect the reconciliation of revenues and expenses related to the provision of Default Energy Service ("DES")?

A. For every kWh transacted, Eversource's DES revenues would decrease by the prevailing DES charge (for example, 8.98 cents per kWh). In exchange, Eversource would retain ISO-NE market price value associated with that kWh. That value is highly variable. The net impact of this transaction would, presumably, be reconciled in the periodic reconciliation of DES. Of course, the Commission may address recovery in some different manner, though it is not clear how any such recovery might be implemented through Eversource's DES rates, nor how it might need to be later adapted to account for the divestiture of Eversource's generation assets and the shift to a competitive procurement model, if that is approved by the Commission.

Q. In general, what do you expect to be the net impact on DES?

A. Given that the DES rate is a firm, full-requirements service (and priced as such) and that the ISO-NE spot market price is a non-firm service, it is almost certain that over the long-term the net impact will be a detriment to Eversource customers. There is also nothing in the docket record to suggest that Fiske and FEL would be barred from switching amongst various forms of energy service as conditions dictate. For example, if ISO-NE market prices exceed the prevailing DES rate temporarily (*e.g.*, during the volatile winter months), Fiske and FEL would appear to be able to temporarily revert to the existing arrangement and then to resume their arrangement with the prices shifted.

Q. Given the evolution in the markets that has occurred since the passage of both RSA 362-A:2-a and electric utility restructuring (RSA 374-F), are there other, more appropriate means for FEL and Fiske to effectuate this desired purchase and sale transaction?

A. There are, and they would not impact Eversource or the competitive market. A first thought is that the most expedient method would be to use a competitive retail supplier as a "middle man." The supplier would enroll FEL as a customer and could also contract with Fiske to purchase a portion of the hydro output. Both of these arrangements are easily implemented using existing utility, supplier, and generator business practices in use across the ISO-NE territory. As the petitioner is fully aware, FEL could also become its own ISO-NE "market participant," if it is not one already, and purchase all of its power under the "self-supply" construct. As a market participant, FEL could transact

directly with Fiske and the Fiske "Generator Asset" could be re-registered such that FEL would become the "Asset Owner" for all or a portion of the output. Should the Commission decide to authorize the proposed arrangement between FEL and Fiske, it should condition that approval on the use of one of the transactional structures noted above.

Q. If FEL determines that it will pursue this transaction, is there evidence in the docket record on which the Commission could order Eversource to wheel power from Fiske to FEL at a certain wheeling charge?

A. There is no evidence in the record supporting a wheeling charge, and FEL has not provided any in discovery. As FEL stated in its testimony, it has not submitted a proposed wheeling contract, and did not ever approach Eversource to discuss the terms of a proposed contract. Eversource's discovery question 11, which is attached to this testimony as Exhibit RCL-3, requested that FEL describe how the wheeling costs would be determined and asked what information or inputs would be necessary to determine an appropriate wheeling charge. FEL's response to question 11 was not helpful in this regard.

Q. Please comment on FEL's response to Eversource question 11.

A. FEL notes that Eversource does not currently charge wheeling fees to Fiske associated with power sales to the utility. FEL suggests that this is "an implicit recognition by Eversource that there are no costs incurred by Eversource associated with the delivery of the Fiske output to ISO-NE." This is not true. Fiske, like all buyers and sellers of

electricity on the Eversource system, utilizes the distribution system and, thus, bears some responsibility for the associated costs of designing, building, owning, operating and maintaining the network. However, in New Hampshire and elsewhere, the collection of these delivery costs has been incorporated into retail rate customer tariffs. In effect, the costs of the system are paid by end-use customers via retail charges. Small power producers have used the system to sell power, but have not contributed to recovery of the costs since they are covered by end users. While this retail rate structure could be revisited, its existence is not an "implicit recognition" that small generators should be forever allowed to wheel power with no charge, nor that any end-use customer transacting with a small generator (*e.g.*, FEL) should be permitted to avoid paying the retail delivery charges.

Q. Is FEL aware of the fact that all costs of the delivery network are recovered by end-use customers?

A. Yes. FEL's response to discovery questions OCA 1-12 and 1-9, attached as Exhibit RCL-4, indicate that it is aware of this construct.

Q. Could you comment on FEL's statement in response to question 11 that Fiske "reduces loads and therefore the investments and expenses incurred by Eversource in the operation of its transmission and distribution system"?

A. This statement is simply untrue. The output of a hydro-electric unit is very volatile and depends on a variety of factors, most notably the availability of water. When the unit operates, it does, in fact, reduce loads being delivered on the local distribution circuit, but

the extent of any reduction is limited in time and varies considerably while it is being delivered. Further, the delivery of that power does nothing to actually reduce Eversource's delivery expenses. The cost of owning, operating and maintaining the delivery network is almost entirely based on the requirement to provide firm, reliable service under all conditions, including on the instance of peak demand. A distribution utility cannot rely on the unpredictable nature of intermittent power resources to defer distribution investments or avoid operational expenses. In fact, the Fiske plant has been offline for many months. Had Eversource deferred a capital investment in the local delivery network in expectation of Fiske's contribution to firm, reliable service, the system could have been in a compromised state awaiting its return to operation.

Q. In light of your prior responses, do you have any comment on FEL's position that there should be no charge to either Fiske or to FEL for the delivery of Fiske's power directly to FEL?

A. FEL's position is completely unsupportable regardless of whether or not reliance on RSA 362-A:2-a is appropriate. Even assuming RSA 362-A:2-a might still apply to a transaction like this, the Commission cannot order Eversource to deliver power to FEL at no charge. FEL neglected to note that RSA 362-A:2-a, III(a) requires that "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 is not likely to result in a reasonably ascertainable uncompensated loss for any party affected by the wheeling transaction."

Q. Would there be an uncompensated loss if the Commission were to order Eversource to deliver the power at no charge to either Fiske or FEL?

A. Yes, there would. By FEL's own admission, the electrical loads at each point on Eversource's transmission and distribution system would not change as a result of the transmission of electricity from Fiske to FEL. The only thing that would change is the amount of revenue that Eversource would receive from FEL for the delivery of energy to FEL. That loss to Eversource would be a loss of distribution revenue, transmission revenue and stranded cost revenue. In the near term, there would be a quantifiable loss of revenue, and, ultimately, that loss would need to be recovered from all customers.[1]

Additionally, under the proposed transaction, either Fiske or FEL may cancel the contract for any reason on 30 days' notice, which means that in addition to collecting lower revenue from the transaction, Eversource would incur costs to administer the contract and to be prepared wind up the transaction and the related manual billing that it would require with little notice and for any reason FEL or Fiske deemed appropriate.

Q. Are there other elements of RSA 362-A:2-a that raise a concern for you?

A. Yes. The law states that although the Commission will not set the terms of a contract between a producer and the end user, it can disapprove any contract which in its judgment:

[1] Lost transmission and stranded cost revenue would be recovered from all customers during the next reconciliation of such costs, and lost distribution revenue would be recovered from customers following the next distribution rate case.

(a) Fails to protect both parties against excessive liability or undue risk, or

(b) Entails substantial cost or risk to the electric utility in whose franchise area the sale takes place, or

(c) Is inconsistent with the public good.

Clearly this proposed transaction entails substantial risk to the electric utility. If the Commission approves this transaction, it will result in lost delivery revenues for which there is no established recovery mechanism and it would require Eversource to develop and maintain capabilities for administering this transaction (which could be cancelled at any time) as well as any other transactions that might come along. FEL has stated on its website, attached as Exhibit RCL-5, that this transaction would become a model for any LEEPA facility, either existing or new. For example, a new 5 MW solar PV project could utilize this structure to sell power at retail rates, including delivery rates. Approving this transaction may result in numerous other contracts between an unknown number of different producers and end users, and each with different terms, conditions, pricing structures, and other features, and for which the utility would be at risk to properly administer.

Additionally, approving this transaction may provide a mechanism for an extreme and unlimited expansion of the net metering program at full retail rates. The burden of such an extreme subsidy program would impact the financial health of the utility (without an

approved recovery mechanism) and would also result in increased delivery rates for all customers in order for the utility to collect the needed revenues to design, own, operate and maintain the network. This is clearly not "consistent with the public good."

Q. What would it mean for this transaction if the Commission were to agree that RSA 362-A:2-a has been surpassed by the more recent Electric Utility Restructuring law (RSA 374-F)?

A. In that case, and as Eversource had pointed out in its motion to dismiss in this docket, FEL's request is tantamount to a request that the Commission force Eversource to render service to FEL under a special contract. A special contract would be required because, as stated earlier, Eversource's tariff already provides for terms, conditions and prices for the delivery of electricity to a retail customer. In order for the Commission to approve a special contract, RSA 378:18 requires a demonstration that special circumstances exist which render departure from the general schedules just and consistent with the public interest. FEL has made no such demonstration, and cannot make such a demonstration due to its admission in its response to question 11 that nothing will change electrically as a result of its proposal.

Q. What action do you recommend that the Commission take on FEL's proposal?

A. The Commission should reject FEL's proposal since it is insufficiently developed to demonstrate how it complies with the various requirements of RSA 362-A:2-a, and since, as Eversource has pointed out, it imposes risk on the utility, is inconsistent with the public good, and is likely to result in an uncompensated loss to Eversource.

Q. Does this conclude your testimony?

A. Yes, it does.