

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

**PETITION ON BEHALF OF CIANBRO ENERGY, LLC FOR DECLARATORY
RULING REGARDING RULE PUC 2002.05**

Now Comes Freedom Logistics, LLC d/b/a Freedom Energy Logistics (“FEL”) and, pursuant to Rule Puc 207.01, seeks a declaratory ruling on behalf of its client¹ Cianbro Energy, LLC (“Cianbro Energy”), regarding the proper interpretation of Rule Puc 2002.05 with respect to its application to Cianbro Energy and its parent The Cianbro Company (“Cianbro Company”), in support hereof says as follows:

1. Cianbro Energy (ID No. 51274) and Cianbro Company (ID No. 51273) are both Members of NEPOOL and ISO-NE. Cianbro Energy is a Market Participant End User; Cianbro Company is a Governance–Only member. As such, both Cianbro Energy and Cianbro Company are Members of the End User Sector.

2. Under this arrangement, as authorized by NEPOOL and ISO-NE, Cianbro Energy, provides electricity to its parent, Cianbro Company in a number of New England states. As a Market Participant End User, Cianbro Energy is not a Supplier and is not a member of the Supplier Sector at NEPOOL.

3. Cianbro Energy ceased supplying electricity to Cianbro Corporation in New Hampshire in June of 2104. However, the Staff of the Commission has advised FEL that it “continue[s] to believe that Cianbro Energy should have been registered as a competitive electric power supplier with the NHPUC.”

4. Accordingly, FEL, on behalf of Cianbro Energy, seeks a declaratory ruling that Cianbro Energy was not required at any time to have been registered as a competitive electric power supplier with the NHPUC.

5. A competitive electric power supplier (CEPS) is any person or entity, that sells or offers to sell electricity to retail customers in this state. *Rule Puc 2002.05*.

6. The Commission has previously ruled that

...under the plan proposed herein whereby Luminescent will purchase all or a portion of its electricity directly from the NEPOOL Spot Market as a Market Participant End User, neither RSA 374-F:7 nor the Competitive Supplier Rules shall be deemed to apply to NEPOOL, the ISO-NE or the entities from whom Luminescent ultimately purchases in the spot market...

¹ FEL provides management services to Cianbro Energy with respect to its account at NEPOOL and ISO-NE.

Luminescent Systems, Inc., Order No. 24,172 (May 13, 2003) at 15.

7. Accordingly, Cianbro Energy, as a Market Participant End User, has not been required at any time to be registered as a competitive electric power supplier with the NHPUC.

8. Moreover, in New Hampshire, in accordance with the *Luminescent* decision, Cianbro Corporation (or any other end user) is entitled to purchase electricity directly from ISO-NE without relying on an intermediary such as Cianbro Energy.

9. The use of an intermediary is merely an intra-corporate accounting mechanism so that the books of Cianbro Corporation are handled in the same manner as other states where Cianbro Energy needs and does have a retail license.

10. The position of the Staff is also inconsistent with the Supreme Court's ruling in *Appeal of Zimmerman*, 689 A.2d 678, 141 N.H. 605 (N.H. 1997). In *Zimmerman*, the Court overturned that Commission's ruling that Mr. Zimmerman was a public utility because he offered telecommunications services to his clients. The Court ruled that Mr. Zimmerman was not a public utility because Mr. Zimmerman enjoyed an underlying relationship with those persons who use his services that is sufficiently discrete as to differentiate them from the immediate public.

11. The Staff's position is extreme in that it would subject Cianbro Energy to regulation as a CEPS but not as a public utility. Cianbro Energy should not have been required to obtain a CEPS license in order to supply electricity to its parent, Cianbro Corporation.

WHEREFORE, FEL respectfully requests the Commission to issue a ruling declaring that Cianbro Energy was not required at any time to have been registered as a competitive electric power supplier with the NHPUC, and to grant such other and further relief as may be just and equitable.

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

Dated: October 29, 2014

/s/ James T. Rodier
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AFFIRMATION

I hereby affirm that I have knowledge of the relevant facts stated in the foregoing Petition and that those facts are true and accurate to the best of my knowledge and belief.

/s/ **James T. Rodier**

James T. Rodier

NH Bar #8583