

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

**PETITION FOR DECLARATORY RULINGS REGARDING
RSA 362-A:2-a AND RULE PUC 2002.05**

Now Comes Freedom Logistics, LLC d/b/a Freedom Energy Logistics (“FEL”) and, pursuant to Rule Puc 207.01, seeks declaratory rulings regarding the continued vitality of RSA 362-A:2-a, and the applicability of Rule Puc 2002.05, and in support hereof says as follows:

1. FEL(www.felpower.com) provides customer specific services in the areas of retail electricity/natural gas portfolio management, RFP creation and management, online auctions for generators or end users, demand response, renewable procurement and compliance as well as Self-Supply.

2. FEL is also a delivery customer of PSNH (Rate G) with a service location at 5 Dartmouth Drive, Unit 8, Auburn, NH 03032.

3. 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.

4. 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. RSA 362-A:1-a; RSA 362-A:2-a, I.

5. 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)¹.

6. It has been 29 years since the legislature enacted RSA 362-A:2-a, and 19 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.

¹ Counsel for FEL in the present matter also served as Cabletron’s counsel in the 1995 matter.

7. During this period, not one end user or LEEPA facility has made any attempt to take advantage of the provisions of RSA 362-A:2-a because of the lack of clarity on parameters and implementation and the associated prospect of litigation with the utilities.

8. FEL wishes to purchase power directly from a LEEPA pursuant to RSA 362-A:2-a and the Commission's Order in Cabletron.

9. An issue which may arise in this proceeding is whether the enactment of RSA 374-F in 1996, or any other subsequent statute, has impliedly repealed RSA 362-A:2-a. See Ingersoll v. Williams, 118 N.H. 135 (1978).

WHEREFORE, FEL respectfully requests the Commission to issue the following rulings of law:

A. That the Commission's Order in Re Cabletron Systems, Inc. remains good law.

B. That a LEEPA facility that produces not more than 5 megawatts of power may sell power directly to not more than 3 end users without being required to register as a Competitive Electric Power Supplier (CEPS) with the Commission.

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

Dated: December 2, 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