

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 15-068

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**

Order Denying Motion to Reconsider

ORDER NO. 25,810

September 8, 2015

In this order, we deny Eversource's motion to reconsider Order No. 25,801, except to the extent Eversource asked us to clarify that there is no conflict between RSA 362-A:2-a and other statutes that may be at issue in this docket, which clarification we provide.

I. PROCEDURAL HISTORY

Freedom Logistics, LLC d/b/a Freedom Energy Logistics (FEL), seeks Commission approval of a contract for FEL's retail purchase of electricity directly from Fiske Hydro, Inc., pursuant to RSA 362-A:2-a. The statute authorizes an entity like Fiske Hydro, a "limited producer of electrical energy," to sell its energy "to not more than 3 purchasers other than the franchise electric utility," and requires the utility to "transmit electrical energy from the producer's facility to the purchaser's facility in accordance with the provisions of this section." RSA 362-A:2-a. Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) moved to dismiss the petition for a number of reasons, which motion the Commission denied in *Freedom Logistics, LLC d/b/a Freedom Energy Logistics*, Order No. 25,801 (July 29, 2015). Eversource moved to reconsider Order No. 25,801. FEL objected.

II. POSITIONS OF THE PARTIES AND STAFF

A. Eversource

Eversource claims the Commission overlooked or misunderstood three arguments. Eversource first contends that the Commission did not address the argument that FEL's "petition and other information [are] insufficient to support the required findings" under RSA 362-A:2-a, alleging "FEL [has] not provided any information that would permit the Commission to enter an order on wheeling pursuant to RSA 362-A:2-a, III."¹ Motion at 2. Second, Eversource characterizes FEL's request that Eversource should wheel and transmit power at no cost to FEL or to Fiske as seeking "approval of a special contract for service at rates other than those fixed by Eversource's [tariff]." Motion at 3. Eversource argues that the order misunderstood its argument "that the only compensation scheme that could conceivably be applicable is one relating to special contracts [and] neither Eversource's retail tariff nor the requirements for special contracts would apply to this situation." Motion at 4-5. Since, according to Eversource, FEL "provided no information that would satisfy the requirements" of the special contract statutes, RSA 378:18 and RSA 378:18-a, the Commission should have granted the motion to dismiss. Motion at 4.

Finally, Eversource seeks clarification of the statement "that RSA 362-A:2-a may conflict with the other laws." Order No. 25,801 at 9. Eversource states it did not argue a statutory

¹ RSA 362-A:2-a, III provides:

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.

conflict, “but that FEL had requested that Eversource wheel and transmit power at no cost without justifying such a request under Eversource’s tariff, [under] RSA 362-A:2-a, or under the only other statute Eversource believed could be at issue, RSA 378:18.” Motion at 5. Eversource argues that regardless of the governing statute, FEL did not present sufficient evidence to support approval of the contract. Eversource asks that we clarify the statement that the statutes “may” conflict.

B. FEL

Regarding FEL’s alleged failure to present sufficient information to support the necessary findings under RSA 362-A:2-a, III, FEL notes that Fiske Hydro’s production is about 0.03 percent of Eversource’s peak demand, that FEL seeks to buy only 2 percent of Fiske Hydro’s output (or about 0.0006 percent of Eversource’s peak demand), and that “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.” Objection at 2 (quoting FEL’s prefiled testimony at 4). FEL repeated its assertion that “the FEL/Fiske transaction will not result in reasonably ascertainable uncompensated loss for any party,” Objection at 3, and repeated its offer to “pay Eversource for any [net] costs determined by the Commission ... incurred in wheeling and delivering the Fiske Hydro electrical output to FEL’s meter,” Objection at 4. FEL argues these facts support the findings required by RSA 362-A:2-a, III.

Second, FEL argues Eversource’s tariff-based arguments are “are expressly not applicable to the FEL/Fiske transaction,” because the tariffs apply to competitive suppliers and Fiske Hydro is not a competitive supplier. Objection at 3. Finally, FEL agrees that there is no conflict in the statutes. “FEL seeks to transmit and deliver power pursuant to RSA 362-A:2-a.

FEL has not sought to vary the terms of Eversource's Tariff pursuant to RSA 378:18."

Objection at 5 (emphasis in original).

C. Staff and Intervenors

Neither Staff nor any of the intervenors took a position on Eversource's motion to reconsider.

III. COMMISSION ANALYSIS

The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (Nov. 21, 2011). Good reason includes a showing that there are matters the Commission "overlooked or mistakenly conceived in the original decision," *Dumais v. State*, 118, N.H. 309, 311 (1978) (quotation and citation omitted), or if the movant presents new evidence that was "unavailable prior to the issuance of the underlying decision," *Hollis Telephone Inc.*, Order No. 25,088 at 14 (April 2, 2010). A motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014). Eversource's motion does not present new information, but relies on the argument that the Commission overlooked or misunderstood the issues described above. We disagree.

First, we reject Eversource's argument that FEL has not provided enough information to support an order approving FEL's contract. The statute requires Commission findings that there will not likely be "a reasonably ascertainable uncompensated loss" or "undue burden" on Eversource, that the wheeling arrangement "[w]ill not unreasonably impair the reliability of the electric utility wheeling the power," and that the arrangement will not impair "the ability of [Eversource] to render adequate service to its customers." RSA 362-A:2-a, III. FEL presented

some evidence that could support findings that the transaction will impose no net costs on Eversource (and offered to pay any such costs that may be proven) and that there will be no effect on Eversource's system. That FEL's factual assertions may not be fully developed is not grounds to dismiss the petition. Parties may take advantage of the discovery process to develop and vet their respective positions. We will scrutinize the evidence presented at hearing to determine whether it meets the statutory requirements.

Second, we disagree that the "only compensation scheme that could conceivably be applicable is one relating to special contracts," as Eversource argues. Motion at 2. Eversource concedes that this case does not present a special contract because Eversource has not agreed to any rate that is outside its tariff. *See* Motion at 4, n. 1. Special contracts necessarily require the utility to be a party and Eversource has not entered an agreement with FEL or Fiske Hydro. Because FEL does not present a special contract for approval, FEL need not present evidence that satisfies the conditions of RSA 378:18.

Finally, regarding Eversource's request that we clarify the statement "that RSA 362-A:2-a may conflict with the other laws" that may be at issue in this case, Order No. 25,801 at 9, we acknowledge that the statement was unnecessary. FEL seeks approval under RSA 362-A:2-a and not under the special contract statutes. Eversource correctly notes that the special contract statutes do not apply because Eversource is not a party to any agreement. This acknowledgement does not affect the soundness of Order No. 25,801. We thus deny Eversource's motion to reconsider.

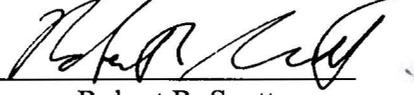
Based upon the foregoing, it is hereby

ORDERED, that Eversource's motion to reconsider is denied.

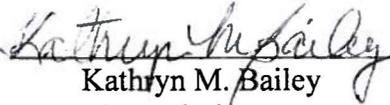
By order of the Public Utilities Commission of New Hampshire this eighth day of
September, 2015.



Martin P. Honigberg
Chairman

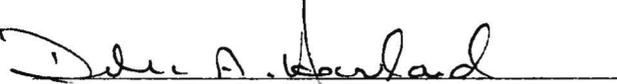


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director