

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 14-305

FREEDOM LOGISTICS, LLC, d/b/a FREEDOM ENERGY LOGISTICS (“FEL”)
PETITION ON BEHALF OF CIANBRO ENERGY, LLC FOR A
DECLARATORY RULING REGARDING RULE PUC 2002.05

BRIEF OF FEL ON BEHALF OF CIANBRO ENERGY, LLC

I. Introduction and Background

On October 30, 2014, Freedom Logistics, LLC, d/b/a Freedom Energy Logistics (“FEL”) filed a Petition on behalf of Cianbro Energy, LLC for a Declaratory Ruling regarding Rule Puc 2002.05 with respect to the proper interpretation of Rule Puc 2002.05, namely that Cianbro Energy has not been required to be registered as a competitive electric power supplier with the NHPUC.¹

A prehearing conference and technical session were held on December 2, 2014. FEL and the Staff filed a Stipulation of Facts on February 3, 2015. The parties subsequently agreed that FEL’s Brief would be filed on February 20, and that Staff’s Reply Brief would be filed on March 6, 2015. A hearing on the merits has been scheduled for March 12, 2015.

II. Facts

1. Between April 5, 2011 and May 5, 2014, Cianbro Energy acquired electricity through the regional wholesale power markets and provided such electricity in New Hampshire to its affiliate Cianbro Corporation. (collectively, the “Cianbro Customers”);
2. Each of the Cianbro Customers is under 100% common ownership with Cianbro Energy, either directly or indirectly through other subsidiaries and affiliates;
3. The Cianbro Companies became a governance-only member of the New England Power Pool (“NEPOOL”), electing to join the End User sector of NEPOOL, effective as of November 1, 2009;

¹ The underlying issue is whether Cianbro Energy should have complied with RPS regulations. *See* RSA 362-F:2, XIV.

4. Cianbro Energy became a member of NEPOOL, joining the End User sector of NEPOOL, effective as of November 1, 2009;

5. Cianbro Energy became an approved Market Participant in the regional wholesale power markets administered by ISO New England, Inc., effective as of November 1, 2009;

6. Cianbro Energy was required to join the End User sector of NEPOOL because it is a Related Person of another End User Participant (The Cianbro Companies), and, except for New Hampshire, it is licensed as a competitive supplier under the statutes and regulations of the state in which the End User is located.

7. Cianbro Energy does not and did not provide electricity in New Hampshire to any end use customers other than the Cianbro Customers at any time;

8. The Cianbro Customers are retail electric customers in the State of New Hampshire, and, since May 5, 2014, they have purchased electricity either from a registered competitive electric power supplier or from utility default service;

9. The transactions whereby Cianbro Energy provided electricity to Cianbro Customers in New Hampshire represented “sales” of electricity, notwithstanding any accounting mechanism used for or accounting treatment given to such transactions;

III. Issue Presented

Was the sale by Cianbro Energy to Cianbro Corporation a sale within the meaning of Rule Puc 2002.05? Was Cianbro Energy was required at any time to have been registered as a competitive electric power supplier (“CEPS”) with the NHPUC?

IV. Argument

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*. As noted above, FEL on behalf of Cianbro Energy, stipulated that the transactions whereby Cianbro Energy provided electricity to Cianbro Customers in New Hampshire represented “sales” of electricity. Nonetheless, FEL contends that the sale by Cianbro Energy to Cianbro Corporation should not be considered a sale within the meaning of Rule Puc 2002.05 for all of the reasons stated hereinafter.

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...

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

Moreover, the Commission explained that “[w]e find that the intent of these rules is to provide a means by which certain disclosures, financial assurances and consumer protections will be available from entities seeking to sell electricity to retail customers in New Hampshire, as well as a means for Commission enforcement of these requirements.” *Id.* at 11.

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. Indeed, such end users as St. Anselm’s College, the Union Leader, and the Town of Hanover purchase all of their electricity directly from the NEPOOL/ISO-NE wholesale markets. There is no CEPS involved in any of these cases.

Under these circumstances, Cianbro Energy should not have to obtain a CEPS license in order to supply electricity to its parent. The use of an intermediary is merely an optional 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.

A narrow, literal interpretation and implementation of Rule Puc 2002.05, would result in the anomalous situation wherein Cianbro Energy would be subject to regulation as a CEPS but not as a public utility. In the Supreme Court’s ruling in Appeal of Zimmerman, 689 A.2d 678, 141 N.H. 605 (N.H. 1997), 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. Certainly, Cianbro Energy has an underlying relationship with Cianbro Corporation that is sufficiently discrete such that Cianbro Energy

should be able to sell to Cianbro Corporation without being regulated as a public utility by the Commission.²

V. Conclusion

FEL contends that the sale by Cianbro Energy to Cianbro Corporation should not be considered a sale within the meaning of Rule Puc 2002.05 for all of the reasons stated hereinafter.

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

/s/ James T. Rodier

Dated: February 20, 2015

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Certification

I hereby certify that I have sent a copy of this Brief to persons on the Service List for this proceeding.

/s/ James T. Rodier

² Would a roof-top solar facility selling electricity to a tenant be subject to regulation as a CEPS?