

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 14-305

FREEDOM LOGISTICS, LLC, D/B/A FREEDOM ENERGY LOGISTICS

**Petition on behalf of Cianbro Energy, LLC,
For a Declaratory Ruling regarding Rule Puc 2002.05**

Order Denying Motion for Rehearing

ORDER NO. 25,788

June 5, 2015

In this order, the Commission denies the motion for rehearing filed on behalf of Cianbro Energy, LLC (Cianbro Energy), with respect to our Order No. 25,775 issued on April 8, 2015, in which we declared that Cianbro Energy was operating in New Hampshire as a competitive electric power supplier from April 5, 2011, through May 5, 2014, and that, accordingly during that time period, Cianbro Energy was required to be registered with the Commission under the Puc 2000 rules and to comply with the renewable portfolio standard requirements under RSA 362-F and the Puc 2500 rules.

I. PROCEDURAL BACKGROUND

On April 8, 2015, the Commission issued Order No. 25,775 (Order) addressing the petition for declaratory ruling pursuant to N.H. Code Admin. Rules Puc 207.01 filed by Freedom Logistics, LLC, d/b/a Freedom Energy Logistics (FEL), on behalf of its client Cianbro Energy, regarding the application of Puc 2002.05 to Cianbro Energy and Cianbro Energy's parent company, Cianbro Corporation. In the Order, we found that (1) Cianbro Energy operated as a competitive electric power supplier (CEPS) in New Hampshire between April 5, 2011, and May 5, 2014, and was required to have been registered with the Commission during that time period; and (2) Cianbro Energy as a CEPS was a "provider of electricity," under RSA 362-F:2, XIV, from April 5, 2011,

through May 5, 2014, and was and is required to comply with renewable portfolio standard (RPS) requirements, with respect to that time period.

FEL on behalf of Cianbro Energy filed a timely motion for rehearing of the Order. No objection to the motion was filed by Staff or any other party.

II. PETITIONER'S MOTION FOR REHEARING

In its motion for rehearing, FEL identified four alleged errors. First, FEL claimed that there is no basis in the record of the proceeding for the Commission to have found that the intent of the amended CEPS definition in the current rules is clear, citing passages from the hearing in which the intent of the Commission that adopted the rules amendment at the time was questioned. FEL asserted that the Commission's finding "that the intent of the amended CEPS definition in the current rules is clear" is not supported by the record and therefore is erroneous. Motion at 1-2, citing Order at 7.

Second, FEL alleged that there is no basis in the record of this proceeding for the Commission to have found that, with respect to New Hampshire, Cianbro Energy made a "business decision" to purchase electricity through an affiliated intermediary." In support of this claim, FEL cited its counsel's statement at hearing that "what happened here, with the benefit of hindsight, certainly, there would not have been a middleman in this case with Cianbro. But it was just done sort of inadvertently, unintentionally." Motion at 2-3; Transcript of March 12, 2015 Hearing (Tr.) at 8. According to FEL, because no "business decision" was made by Cianbro Energy to purchase electricity through an affiliated intermediary, the Commission's finding that "Cianbro made a 'business decision'" to purchase electricity through an affiliated intermediary is not supported by the record and therefore is erroneous. Motion at 3.

Third, FEL argued that the CEPS registration rules do not apply to Cianbro Energy because Cianbro Energy sells electricity directly to its sole owner. According to FEL, because the rules do not apply, it was unreasonable for the Commission to deny Cianbro Energy's request for a waiver.

FEL drew a distinction between Cianbro Energy, which is owned directly by its parent company, Cianbro Corporation, and Texas Retail Energy, LLC (Texas Retail), which is a lower-level subsidiary of Wal-Mart Stores, Inc., a large retailer with many New Hampshire stores that are provided electric service by Texas Retail. Because Texas Retail does not sell electricity directly to its corporate parent, as does Cianbro Energy, FEL suggested that Texas Retail's sales may raise consumer protection issues that are not present in the case of Cianbro Energy's sales to its parent. Motion at 3-4.

Finally, FEL claimed that the Commission erred in finding no "meaningful distinction" between the market activities of Cianbro Energy in selling electricity to its affiliated end user during the relevant timeframe and those of other affiliated suppliers that were registered with the Commission. FEL referenced the Commission's statement in the Order that "[i]t is also an important objective of our regulation that similarly-situated market participants be treated consistently and fairly." Motion at 4. In support of an alleged meaningful distinction between Cianbro Energy and other affiliated suppliers, FEL cited statements made during the hearing to suggest that Texas Retail registered as a CEPS with the Commission rather than as a Market Participant End User with ISO New England (ISO-NE) based on guidance it received from Commission Staff, and that Texas Retail's real interest in this proceeding "appears to be how to obtain information on how to bypass the RPS requirements like the Union Leader, and other New Hampshire ISO-NE end users." According to FEL, there would therefore "be nothing unfair about treating Cianbro Energy differently from [Texas Retail]." Motion at 4-5.

III. COMMISSION ANALYSIS

Pursuant to RSA 541:3 and RSA 541:4, the Commission may grant rehearing when a party states good reason for such relief and demonstrates that a decision is unlawful or unreasonable. *See Rural Telephone Companies*, Order No. 25,291 (Nov. 21, 2011) at 9. Good

reason may be shown by identifying specific matters that were “overlooked or mistakenly conceived” by the deciding tribunal, *see Dumais v. State*, 118 N.H. 309, 311 (1978), or by identifying new evidence that could not have been presented in the underlying proceeding, *see O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977); *Hollis Telephone, Inc., Kearsarge Telephone Co., Merrimack County Telephone Co., and Wilton Telephone Co.*, Order No. 25,088 (Apr. 2, 2010) at 14.

We have reviewed the four errors FEL has alleged and find that none raises a new and relevant issue that was not encompassed by the decisions incorporated in the Order. We accepted the stipulation of facts submitted by FEL and Staff as the evidentiary basis for this proceeding. The stipulated facts and the inferential facts that we derived therefrom are sufficient to support our holding. The hearing was an opportunity for oral argument regarding relevant legal and policy issues implicated by FEL’s petition for declaratory ruling. It was not evidentiary, so FEL’s citations to the hearing transcript as a source of the factual record in this proceeding are ineffective.

Because the petitioner’s motion for rehearing failed to demonstrate that the Order was unlawful or unreasonable, we deny the motion and reiterate our finding that Cianbro Energy was selling electricity at retail to its affiliated end use customer during the period between April 5, 2011, and May 5, 2014, and was therefore required to have been registered with the Commission as a CEPS and to have complied with RPS obligations, including the payment of any applicable alternative compliance payments, during that time period.

Based upon the foregoing, it is hereby

ORDERED, that the motion for rehearing filed by FEL on behalf of Cianbro Energy, LLC is DENIED.

By order of the Public Utilities Commission of New Hampshire this fifth day of June, 2015.

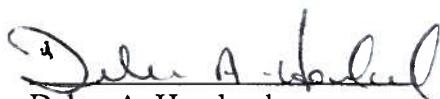


Martin P. Honigberg
Chairman



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director