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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

November 30, 2015 - 10:07 a.m.  
Concord, New Hampshire

NHPUC DEC16'15 PM12:54

RE: 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.*

**PRESENT:** Chairman Martin P. Honigberg, Presiding  
Commissioner Robert R. Scott  
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

**APPEARANCES:** Reptg. Freedom Logistics, LLC, d/b/a  
Freedom Energy Logistics:  
James T. Rodier, Esq.

Reptg. Fiske Hydro:  
Cameron MacLeod

Reptg. Public Service Co. of New Hampshire  
d/b/a Eversource Energy:  
Matthew J. Fossum, Esq.  
Robert A. Bersak, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

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**APPEARANCES: (c o n t i n u e d)**

**Reptg. Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities:**

Stephen R. Hall  
Heather M. Tebbetts

**Reptg. Unutil Energy Systems, Inc.:**

Patrick H. Taylor, Esq.

**Reptg. Granite State Hydropower Assn.:**

Susan S. Geiger, Esq. (Orr & Reno)  
Richard Normand, President of GSHA

**Reptg. PUC Staff:**

David K. Wiesner, Esq.  
Thomas C. Frantz, Director/Electric Division  
Stephen R. Eckberg, Sustainable Energy Div.



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**E X H I B I T S**

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**P R O C E E D I N G**

1  
2 CHAIRMAN HONIGBERG: Good morning,  
3 everyone. We're here this morning in Docket DE 15-068,  
4 which is a Petition by Freedom Energy Logistics and Fiske  
5 Hydro, under RSA 362-A:2-a. I think we're here for a  
6 hearing on the merits. There's been some motion practice,  
7 I know there's testimony filed, there's some other  
8 comments in here. We'll get to those momentarily.

9 But, before we do anything else, let's  
10 take appearances.

11 MR. RODIER: Good morning, Mr. Chairman  
12 and Commissioners. Jim Rodier, for Freedom Energy  
13 Logistics. And, to my right, immediate right, is August  
14 Fromuth.

15 MS. GEIGER: Good morning, Mr. Chairman  
16 and Commissioners. I'm Susan Geiger, from the law firm of  
17 Orr & Reno. I represent Granite State Hydropower  
18 Association. With me this morning at counsel's table is  
19 Mr. Richard Normand, who is the President of GSHA.

20 CHAIRMAN HONIGBERG: Attorney Geiger,  
21 did you file a petition to intervene?

22 MS. GEIGER: Yes, we did.

23 CHAIRMAN HONIGBERG: Do you have it?  
24 It's probably old. I probably didn't make it back. Good

1 enough.

2 MR. RODIER: Mr. Chairman, we have a  
3 third person here who is a party, and just would point  
4 that out, Mr. --

5 MR. MacLEOD: Cameron MacLeod, Fiske  
6 Hydro.

7 CHAIRMAN HONIGBERG: Thank you, Mr.  
8 MacLeod. In the back, Mr. Hall.

9 MR. HALL: Stephen Hall, for Liberty  
10 Utilities. And, with me this morning is Heather Tebbetts.

11 MR. FOSSUM: Good morning,  
12 Commissioners. Matthew Fossum, here for Public Service  
13 Company of New Hampshire doing business as Eversource  
14 Energy. And, with me this morning are Robert Bersak and  
15 Richard Labrecque from the Company.

16 MR. TAYLOR: Good morning. Patrick  
17 Taylor, on behalf of Unitil Energy Systems, Incorporated.

18 MR. WIESNER: Mr. Chairman,  
19 Commissioners, Dave Wiesner, Commission Staff. With me  
20 today are Tom Frantz, Director of the Electric Division,  
21 and, to his right, Steve Eckberg of the Sustainable Energy  
22 Division.

23 CHAIRMAN HONIGBERG: All right. I don't  
24 see anyone from the two solar entities that filed

1 interventions. Am I missing anything?

2 MR. WIESNER: I don't believe they're  
3 represented here this morning, Mr. Chairman. Borrego  
4 Solar had filed --

5 CHAIRMAN HONIGBERG: Very -- what I  
6 considered very helpful testimony, asking us not to do  
7 anything silly.

8 MR. WIESNER: I don't believe that Mr.  
9 Anderson proposed to take the stand or support that  
10 testimony or subject himself to cross-examination. It  
11 might be better to characterize that as a comment.

12 CHAIRMAN HONIGBERG: I think that would  
13 be what it was. I will note that both Borrego Solar and I  
14 think it was New Hampshire SolarGarden, in their  
15 intervention petitions, suggested that they would have  
16 information that would be helpful to us as we made our  
17 decision. So, I think it's something that, in the future,  
18 we should perhaps consider testing that assertion when  
19 it's made in the future. I suspect there are some other  
20 entities that appear before us regularly who would  
21 probably appreciate it if we started considering such  
22 blanket statements by intervenors more closely when they  
23 make them.

24 We have -- I think we granted all the

1 intervention petitions, and I apologize, Attorney Geiger,  
2 for forgetting about yours.

3 I think we have two witnesses, is that  
4 right? Mr. Fromuth is going to testify, and then  
5 Mr. Labrecque. Is there anyone else that is going to be  
6 called as a witness that we know of?

7 *[No verbal response]*

8 CHAIRMAN HONIGBERG: All right. Seeing  
9 none, how are we going to proceed then, Mr. Wiesner? Are  
10 we going to start with Mr. Rodier's witness?

11 MR. WIESNER: Yes. I believe that's  
12 appropriate, for Mr. Fromuth to be the first witness this  
13 morning.

14 CHAIRMAN HONIGBERG: Is there any  
15 business we need to transact before we do that?

16 MR. WIESNER: I'm not aware of any, Mr.  
17 Chairman.

18 CHAIRMAN HONIGBERG: Anyone else?

19 *[No verbal response]*

20 CHAIRMAN HONIGBERG: All right. Seeing  
21 none, why don't you proceed, Mr. Rodier.

22 MR. RODIER: Okay. Thank you, Mr.  
23 Chairman. I'd like to ask Mr. Fromuth to pick one of  
24 those four chairs.



1                   And, perhaps it's clear, but if there  
2                   are any questions on Fiske Hydro itself, Mr. -- Ron is a  
3                   person that is here to tell you about what's going on. As  
4                   you know, he's got a grant from the Commission and all  
5                   that. So, --

6                   CHAIRMAN HONIGBERG: Okay.

7                   MR. RODIER: Yes.

8                   CHAIRMAN HONIGBERG: We'll deal with  
9                   that, if we need to.

10                  MR. RODIER: Good.

11                  CHAIRMAN HONIGBERG: I don't think Mr.  
12                  MacLeod submitted testimony.

13                  MR. RODIER: Yes.

14                  CHAIRMAN HONIGBERG: I appreciate that  
15                  he's here, and I know we ordered the company's  
16                  participation.

17                  MR. RODIER: Yes.

18                  CHAIRMAN HONIGBERG: So, if there are  
19                  issues that come up that needs Mr. MacLeod's input, we'll  
20                  figure out how to deal with that at an appropriate time.

21                  MR. RODIER: All right.

22                  CHAIRMAN HONIGBERG: Mr. Rodier, I'll  
23                  remind you, you may be more comfortable standing up, but  
24                  there are people in the back who may not be able to hear

[WITNESS: Fromuth]

1 you, if you're not using a microphone.

2 MR. RODIER: Okay.

3 (Whereupon **August G. Fromuth** was duly  
4 sworn by the Court Reporter.)

5 MR. RODIER: Good morning, Mr. Fromuth.  
6 Obviously, you've submitted some testimony in this  
7 hearing. And, I'm going to -- the Commission has copies.  
8 Do we need to mark any additional copies? Can we mark  
9 the -- how many copies do you need, Mr. Chairman, to mark  
10 it as "Exhibit 1" for the moment?

11 CHAIRMAN HONIGBERG: Off the record.

12 *[Brief off-the-record discussion*  
13 *ensued.]*

14 CHAIRMAN HONIGBERG: All right. We're  
15 back on.

16 MR. RODIER: Mr. Fromuth, you've got a  
17 copy, right?

18 WITNESS FROMUTH: I do.

19 MR. RODIER: Does anybody else need a  
20 copy?

21 *[No verbal response]*

22 MR. RODIER: Okay.

23 CHAIRMAN HONIGBERG: So, that's marked  
24 as "Exhibit 1" for this hearing.

[WITNESS: Fromuth]

1 (The document, as described, was  
2 herewith marked as **Exhibit 1** for  
3 identification.)

4 MR. RODIER: Okay. So, let's swear  
5 Mr. Fromuth in. Would you raise your right hand, Mr.  
6 Fromuth.

7 CHAIRMAN HONIGBERG: He already did it.

8 MR. RODIER: He already did it. Okay.

9 **AUGUST G. FROMUTH, SWORN**

10 **DIRECT EXAMINATION**

11 BY MR. RODIER:

12 Q. So, Mr. Fromuth, you've got a copy of Exhibit 1 in  
13 front of you. And, what I would like you to do is just  
14 a brief -- try to get a brief summary here of your  
15 direct testimony, meaning what you filed, obviously,  
16 there may be some other issues, but would you just  
17 summarize what is contained in Exhibit 1.

18 A. Certainly. We filed --

19 Q. And, please keep your voice up, too.

20 A. Sure. We filed an action earlier this year that would  
21 enable our company to take advantage of a statute  
22 that's been on the books for some time, called the  
23 "Limited Electric Energy Production Act", or "LEEPA".  
24 And, we identified a counterparty, in the form of Fiske

[WITNESS: Fromuth]

1 Hydro, of Hinsdale, New Hampshire, that would transact  
2 with us under the permission, if you will, granted by  
3 the statute.

4 We have embarked upon a transaction that  
5 requires, of course, Commission approval, that would  
6 have us purchase from Fiske about two percent of the  
7 production of the hydro facility that was --  
8 represented what the historical production levels were  
9 at the time of our filing. That two percent roughly  
10 would equivalent -- it would be equivalent to about  
11 2,000 kWh a month.

12 Since that time, Fiske has ratcheted up  
13 its production capacity to a number that would be far  
14 larger than the traditional value that I just cited of  
15 100K [sic]. So, our requirements would diminish, in  
16 terms of a percentage, of what they -- of their output.

17 And, we are looking to take advantage of  
18 certain key aspects of the statute, the LEEPA statute,  
19 that was first enacted in '78, and I believe it was  
20 amended in the late '90s. And, it has features in it  
21 that allow small renewable energy generation  
22 facilities, 5 megawatts or less, to sell directly to  
23 end-users on the host utility's system, up to three  
24 end-users. And, one of the linchpins of the statute is

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[WITNESS: Fromuth]

1 that the transaction, of the buy/sell transaction, can  
2 avoid being assessed transmission/distribution charges,  
3 if it meets certain criteria.

4 And, one of the criteria being that the  
5 host utility not incur the costs for the delivery of  
6 that power to the end-user.

7 *[Court reporter interruption regarding*  
8 *the microphone.]*

9 WITNESS FROMUTH: There it is. Sorry.

10 **CONTINUED BY THE WITNESS:**

11 A. So, our move in this direction has been to try and  
12 capture the value that's contained in this statute that  
13 is not elsewhere present in any of the restructuring  
14 laws that have since been enacted in New Hampshire  
15 since this statute was. It was actually a very  
16 farsighted one that preceded the more recent  
17 incarnation of restructuring. And, we saw this as an  
18 opportunity for us to transact with small renewable  
19 producers. In this case, we're talking about Fiske  
20 Hydro, but it also might apply to transactions between  
21 ourself or others and, say, solar generators.

22 So, that's basically the summary of my  
23 submitted testimony.

24 MR. RODIER: Thank you. He's available

[WITNESS: Fromuth]

1 for questions, Chairman Honigberg.

2 CHAIRMAN HONIGBERG: Thank you. Mr.  
3 MacLeod, do you have any questions for Mr. Fromuth?

4 MR. MacLEOD: No. My understanding is  
5 as he's described it.

6 CHAIRMAN HONIGBERG: Attorney Geiger, do  
7 you have any questions?

8 MS. GEIGER: No thank you.

9 CHAIRMAN HONIGBERG: I think, with  
10 respect to the utilities, I think Liberty and Unitil would  
11 probably just as soon have Eversource go first, is that  
12 right?

13 I see nodding heads, yes. Mr. Fossum.

14 MR. FOSSUM: Thank you.

15 **CROSS-EXAMINATION**

16 BY MR. FOSSUM:

17 Q. Mr. Fromuth, I wanted to start by going through a few  
18 aspects of the contract that you proposed. Just to be  
19 clear, the contract that we're still working -- that  
20 we're working on today is the one that is included as  
21 Attachment 4 to your testimony, is that correct?

22 A. I believe so.

23 Q. And, you've not filed any amendments or updates or  
24 changes to that contract, is that also correct?

[WITNESS: Fromuth]

1 A. We have not.

2 Q. In your summary just a few moments ago, you had  
3 mentioned that Fiske's production has increased since  
4 the time of your filing. Would that require an  
5 amendment to this contract?

6 A. It would require an amendment to the contract to  
7 recharacterize the volumes that we would be taking from  
8 Fiske, because we want to be careful not to commit to  
9 taking from Fiske volumes that are in excess of the  
10 needs of our facility.

11 Q. Are there any other changes that you expect to make to  
12 this contract?

13 A. Not -- no, I don't believe so.

14 Q. Do have a copy of your testimony and the contract in  
15 front of you?

16 (Atty. Rodier handing document to  
17 Witness Fromuth.)

18 WITNESS FROMUTH: I do.

19 BY MR. FOSSUM:

20 Q. I'd like to direct your attention to what is numbered  
21 paragraph "5" of that Agreement. In bold, it says  
22 "Term of Agreement".

23 A. All right.

24 Q. And, looking at that paragraph, it says "Commencing on

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[WITNESS: Fromuth]

1 30 days after the date of NHPUC approval and continuing  
2 thereafter until terminated upon 30 days notice by  
3 either party." Did I read that paragraph accurately?

4 A. You did.

5 Q. Are there any limitations in that paragraph on your  
6 ability to terminate?

7 A. The "30 day notice" and the "approval by the PUC" of  
8 the contract.

9 Q. But, subject to approval and giving 30 days notice, you  
10 can terminate at any time and for any reason, is that  
11 accurate?

12 A. Yes. Subject to those two conditions.

13 Q. Is there any obligation to inform the utility of that  
14 termination?

15 A. Not in the contract.

16 Q. So, how would the utility know whether you've decided  
17 to terminate the contract?

18 A. I think we would provide a courtesy notification to the  
19 utility.

20 Q. And, what would happen under the contract if the  
21 utility didn't terminate on the schedule that you had  
22 sought?

23 A. Well, I think that, if the utility didn't terminate its  
24 part in the transaction on the date that we specified,

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[WITNESS: Fromuth]

1 then that would lead to an overrun on the continuation  
2 of the contract. It would be subject to reconciliation  
3 down the road.

4 Q. Would there be some risk to the utility if that was to  
5 happen?

6 A. Well, the utility risk or the risk to the utility would  
7 be in whether or not they reacted to notification,  
8 either from ourselves or from Fiske, to a change in the  
9 status of the Agreement.

10 Q. Moving down to the next paragraph, Paragraph 6. In the  
11 first sentence of that paragraph, it says that "Fiske  
12 will sell and FEL will buy two percent of the  
13 electrical output of the Project". Does that output  
14 include energy and capacity?

15 A. No. We're buying just the energy.

16 Q. In the next sentence, the second sentence of that  
17 section, says that "the Contract Quantity", as you've  
18 defined it, "does not include 98 percent of the  
19 electrical energy and capacity". So, since you've  
20 testified that you're only buying energy, would it be  
21 more accurate to state that "it would not include  
22 100 percent of the capacity and 98 percent of the  
23 energy"?

24 A. That's correct.

[WITNESS: Fromuth]

1 Q. Now, as part of this contract, you're not purchasing  
2 delivery service, is that correct?

3 A. There's no reference in the contract to "delivery  
4 service", you're correct.

5 Q. So, in that case, then Fiske, the generator in this  
6 case, would be selling electricity to Freedom as a  
7 retail customer located in PSNH's service territory, is  
8 that correct?

9 A. Well, Fiske would be undertaking a transaction with  
10 Freedom under the structure of 362-A:2. And that, to  
11 me, is neither fish nor fowl. In other words, this is  
12 a pioneering enterprise -- a pioneering action that  
13 doesn't really comport with existing active  
14 operational, you know, customary transactions that  
15 we're all familiar with, either in the retail energy  
16 marketplace or in the net metering marketplace. It's  
17 sort of like a third -- it's a new development, and  
18 it's one that we're pioneering. And, it would be hard  
19 for me to characterize it as a "retail transaction",  
20 because I'm not sure I would -- I guess I would  
21 characterize it as a "LEEPA transaction".

22 Q. So, do I understand your answer to mean that you do not  
23 consider this to be either a wholesale or a retail  
24 transaction?

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[WITNESS: Fromuth]

1 A. It doesn't fit comfortably into either category, no.

2 Q. So, this would then be something that exists outside  
3 any other regulatory scheme?

4 A. Well, where it exists is -- we're trying to develop a  
5 body of regulations to sort of flow from LEEPA, and  
6 it's never been done. So, what we're embarking upon  
7 here is we're plowing new ground and we're blazing a  
8 new trail. So, there would need to be some regulatory  
9 apparatus erected around this, but I think it would be  
10 fairly simple to do, especially on a trial basis.

11 Q. Are you familiar with the Commission's 2000 rules  
12 relative to competitive electric power suppliers?

13 A. I have a basic understanding of most of that, I think.

14 Q. So, are you aware of the Commission's definitions  
15 for -- or, definition for a "competitive electric power  
16 supplier"?

17 A. I have some knowledge of that, yes.

18 Q. In that definition, you agree that the PUC has defined  
19 a "CEPS" as "any person or entity that sells or offers  
20 to sell electricity to retail customers in the state"?

21 A. Okay. Could you clarify for me, is that a PUC  
22 definition?

23 Q. Yes. I mean, subject to check, would you agree that  
24 that is the definition that the PUC has in its

[WITNESS: Fromuth]

1 regulations for a "CEPS"?

2 A. That sounds quite familiar.

3 Q. Was Freedom the petitioner in a docket, Docket Number  
4 DE 14-305, relating to the status of I believe it's  
5 pronounced "Cianbro Energy" as a CEPS?

6 A. Yes, it was.

7 Q. And, in that docket, didn't the Commission conclude  
8 that Cianbro is acting as a CEPS under this definition,  
9 because it acted to sell electricity at retail?

10 A. Yes, the Commission did so.

11 Q. And, based on that determination, did the Commission  
12 require Cianbro to register with the Commission and  
13 comply with all of the requirements that apply to a  
14 competitive supplier?

15 A. I'm not sure that I would go that far. My recollection  
16 is somewhat hazy in that regard, but I would have to  
17 confer with my own records of it or with counsel to  
18 answer that question accurately.

19 Q. That's fine. We can move on. Do you recall if the  
20 Commission at least concluded that Cianbro had to at  
21 least comply with the RPS requirements?

22 A. I do recall that.

23 Q. And, is your recollection that it did have to comply?

24 A. I do recall that, yes.

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[WITNESS: Fromuth]

1 MR. RODIER: Mr. Chairman, I'm not sure  
2 of the relevance of this. We're going to be here all day,  
3 if we're going to stray like this. I don't know what  
4 Cianbro possibly has to do with this.

5 CHAIRMAN HONIGBERG: I think I might.  
6 But --

7 MR. RODIER: Okay. That's all that  
8 counts.

9 CHAIRMAN HONIGBERG: Yes. But you might  
10 want to interrupt before he answers next time, if you want  
11 to lodge an objection.

12 MR. RODIER: Oh, sorry.

13 CHAIRMAN HONIGBERG: But that's okay.  
14 Mr. Fossum, you can continue.

15 MR. FOSSUM: Thank you.

16 BY MR. FOSSUM:

17 Q. So, under Freedom's proposal, which, as I understand  
18 it, calls for Fiske to sell electricity to a retail  
19 customer, would that render Fiske a CEPS, under the  
20 Commission's definition?

21 A. Well, again, the Commission is free to decide and to  
22 make its definitions as it deems appropriate to deal  
23 with statutory sort of swings in paths to take to  
24 enable transactions.

[WITNESS: Fromuth]

1                   This path that we're seeking to take or  
2                   induce the Commission to take a look at to take does  
3                   not conform to our standard definition that you recited  
4                   a moment ago of what a CEPS is. Certainly, there are  
5                   similarities. But it's -- the Commission is free to  
6                   interpret, in its own way, the best way to apply the  
7                   LEEPA -- "the LEEPA permissions" it would grant to  
8                   Fiske and to FEL to undertake this. And, it could,  
9                   obviously, make a decision that it runs close to  
10                  encountering the CEPS law or it could say "this is  
11                  another path".

12                                 So, that's, I think, sort of why we're  
13                   here today, to ask the Commission to take a look at  
14                   doing that?

15   Q.   And, how do you ask the Commission to do that?

16   A.   Through this process that we're in, DE 15-068.

17   Q.   So, do I understand then that you're also requesting  
18                  some sort of a waiver or interpretation of the  
19                  Commission's CEPS regulations as part of this docket?

20   A.   Oh, no, I'm not doing that. I'm simply saying, "here's  
21                  a law that has not yet been embroidered with regulatory  
22                  steps to implement." And, we're asking that there be a  
23                  process and some laboring to get that done. We have  
24                  some inputs on that that we would be suggesting down

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[WITNESS: Fromuth]

1 the road. But, at least at this stage, we have to give  
2 birth to some sort of regulatory pronouncements that  
3 enable LEEPA to become activated.

4 Q. So, then, just so that I understand, is it your  
5 testimony today then that Fiske would not be a CEPS,  
6 under the Commission's regulations, if this contract  
7 was approved?

8 A. I'm not a lawyer. I really probably am not qualified  
9 to answer that question. But my understanding is that  
10 we're asking for a different approach, a different way  
11 of getting this done. And, the fact that there's a  
12 CEPS law is fine, it's complied with. But it may not  
13 be the one that's best applicable to this situation.

14 Q. Mr. Fromuth, I'm going to show you a -- or, ask you to  
15 look at a discovery response. But, before I do that, I  
16 want to ask, for the discovery that was issued in this  
17 docket, were you the witness responding to each of the  
18 questions that were posed to Freedom?

19 A. The discovery questions and responses were a  
20 collaborative effort, and involved myself, my attorney,  
21 others on our staff.

22 Q. I understand. The reason I ask is some of the  
23 questions didn't have a witness identified on the  
24 response. So, I want to make sure that I'm asking the

[WITNESS: Fromuth]

1 right person when I use the question. So, for at least  
2 the questions that were submitted by Eversource to  
3 Freedom, would you be the correct witness to address  
4 the substance of those responses?

5 A. Well, I can take a stab at it, once I see the question  
6 and the response. But, if I'm not the right -- the  
7 subject matter expert, then I'm going to have to say  
8 that.

9 Q. Understood. In which case, I would like to show you a  
10 copy of what is your response to Eversource's Question  
11 Number 2.

12 (Atty. Fossum handing document to  
13 Witness Fromuth.)

14 CHAIRMAN HONIGBERG: Mr. Fossum, do you  
15 have a copy for Mr. Rodier?

16 MR. FOSSUM: I believe I do, yes. I  
17 apologize, I didn't have quite enough copies for the  
18 Commissioners and --

19 (Atty. Fossum distributing documents.)

20 CHAIRMAN HONIGBERG: Off the record.

21 *[Brief off-the-record discussion*  
22 *ensued.]*

23 CHAIRMAN HONIGBERG: Okay. We're going  
24 to go back on the record. We're going to mark this as



[WITNESS: Fromuth]

1 "Exhibit 2".

2 (The document, as described, was  
3 herewith marked as **Exhibit 2** for  
4 identification.)

5 BY MR. FOSSUM:

6 Q. Mr. Fromuth, have you had an opportunity now to look at  
7 the document that I handed to you?

8 A. Yes.

9 Q. And, do you recall that question?

10 A. I do.

11 Q. And, were you, in fact, the respondent on this  
12 question?

13 A. I reviewed the question before it was returned to --  
14 before it was submitted back to Eversource, but I was  
15 not the respondent.

16 Q. So, who was the respondent for this question?

17 A. We have a number of attorneys in our office, as well  
18 Mr. Rodier, and they collaborated on that response.

19 CHAIRMAN HONIGBERG: Mr. Rodier.

20 MR. RODIER: This was -- he's asking a  
21 question of law here.

22 CHAIRMAN HONIGBERG: Well, he hasn't  
23 asked anything yet. All he's asked is "who did this?"

24 And, I think in Mr. Fromuth's --

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[WITNESS: Fromuth]

1 MR. RODIER: I did.

2 CHAIRMAN HONIGBERG: -- answer is "the  
3 lawyers did."

4 MR. RODIER: I did it.

5 CHAIRMAN HONIGBERG: Now, let's see what  
6 Mr. Fossum has to ask, if anything.

7 BY MR. FOSSUM:

8 Q. Understanding that your answer is that this was drafted  
9 by counsel, do you agree with the opinion in the second  
10 sentence, where it states that it's "FEL's opinion,  
11 Fiske Hydro is not required to be a CEPS"?

12 CHAIRMAN HONIGBERG: Wait, Mr. Fromuth.  
13 (Short pause.)

14 CHAIRMAN HONIGBERG: Okay. You can go  
15 ahead.

16 **BY THE WITNESS:**

17 A. Yes, I do.

18 BY MR. FOSSUM:

19 Q. Thank you. Mr. Fromuth, I'm going to provide to you  
20 another response.

21 MR. FOSSUM: This one, for the other  
22 parties, is dated "October 13, 2015". And, it's titled  
23 "Clarification of FEL Response to Liberty 3-c". I think I  
24 have enough copies of it.

[WITNESS: Fromuth]

1 (Atty. Fossum distributing documents.)

2 MR. RODIER: Mr. Chairman, may I just  
3 clarify what we're looking at here? I want to make sure I  
4 have the right copy in front of me. This is dated --

5 CHAIRMAN HONIGBERG: Well, wait, wait.  
6 You just --

7 MR. RODIER: Sorry.

8 CHAIRMAN HONIGBERG: You want to know  
9 that you're looking at the right thing.

10 MR. RODIER: Right.

11 CHAIRMAN HONIGBERG: Mr. Fossum, let's  
12 make sure that Mr. Rodier has in front of him the right  
13 thing.

14 MR. FOSSUM: I'll hand you a copy of  
15 this as well.

16 (Atty. Fossum showing document to Atty.  
17 Rodier.)

18 MR. RODIER: I do.

19 CHAIRMAN HONIGBERG: All right. We're  
20 going to mark this as "Exhibit 3".

21 (The document, as described, was  
22 herewith marked as **Exhibit 3** for  
23 identification.)

24 CHAIRMAN HONIGBERG: Is there something

[WITNESS: Fromuth]

1 you want to say about it, Mr. Rodier?

2 MR. RODIER: No.

3 CHAIRMAN HONIGBERG: Okay. Go ahead,  
4 Mr. Fossum.

5 BY MR. FOSSUM:

6 Q. I'd like to ask the -- begin with the same question  
7 that I had for the prior one. Are you the respondent  
8 on this question?

9 A. I approved the response, but I did not draft the  
10 response.

11 Q. Then, may I ask who did?

12 A. Again, it was the work of attorneys on staff, and also  
13 Attorney Rodier.

14 Q. Okay. Subject to that understanding, could I direct  
15 your attention down to the bottom of the page, under  
16 what is marked as Section "II.(D)" of that response?

17 A. Okay.

18 Q. And, in this response, and with the understanding that  
19 you've stated you're not the respondent, it states that  
20 "If two percent of Fiske's energy output exceeds the  
21 amount of energy (kWh) consumed by FEL in any month,  
22 FEL will transfer and assign said excess to PSNH." And  
23 then, "(This is often referred to as a "use or lose"  
24 provision.)" Did I read that accurately?

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[WITNESS: Fromuth]

1 A. You did.

2 Q. And, again with the understanding that you did not  
3 draft the response, do you agree that that's how this  
4 contract would be administered?

5 A. I agree that, again, if we had a situation in which we  
6 were taking more energy from Fiske under the Agreement  
7 than we needed for our -- to consume for our load, that  
8 it would revert to -- the excess power would be  
9 absorbed by PSNH.

10 Q. How would that be "absorbed by PSNH", in your  
11 understanding?

12 A. Well, we would take our numerical -- numerical  
13 quantity, and the portion, if it did surpass our needs,  
14 it would then be absorbed in system supply.

15 Q. Would that energy be sold by FEL back to PSNH?

16 A. No. It would essentially be handled in a way that the  
17 "98 percent of the energy" that Fiske is generating and  
18 not being purchased by FEL is being treated. In other  
19 words, it would revert to that model.

20 Q. So, PSNH would be the direct purchaser of that energy?

21 A. Well, under the current deal structure, PSNH buys  
22 100 percent of Fiske's output. And, under the proposed  
23 structure, PSNH would buy -- we would buy two percent,  
24 and PSNH would buy the balance.

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[WITNESS: Fromuth]

1                   So, if the two percent exceeded what our  
2 requirements were, then it would somewhat less than  
3 two percent that we would be buying, and somewhat more  
4 than 98 percent that PSNH would then be buying.

5 Q. Is that described in the contract?

6 A. I believe it is, not with that type of detail, but I  
7 believe that the structure is described.

8 Q. And, would it be up to PSNH to calculate on a monthly  
9 basis what energy it was buying directly, versus what  
10 energy -- at the 98 percent, versus what it might be  
11 taking as the leftover excess?

12 A. Well, the metering functions that are now in place  
13 would, obviously, provide key data feedbacks to all  
14 parties. So, any one of the parties, but, principally,  
15 the meter reader, which, of course, is PSNH, would  
16 have -- would capture that data, and, therefore, in a  
17 post data read -- meter read situation, there would be  
18 a determination as to whether or not this two percent  
19 rule was being adhered to.

20 Q. So, basically, PSNH would be responsible for doing load  
21 balancing under your contract, is that correct?

22 A. Well, yes. PSNH performs load-balancing services on  
23 its system now. So, it would stand to reason that they  
24 would continue in this arrangement.

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[WITNESS: Fromuth]

1 Q. I'd like to return back to the contract, to Attachment  
2 4 to your testimony, and, in particular, Paragraph 7.  
3 I'd just like to ask, in that paragraph, it states that  
4 the Seller, Fiske, would arrange for the delivery of  
5 the energy. Could I ask how?

6 MR. RODIER: Only if you know, Mr.  
7 Fromuth.

8 **BY THE WITNESS:**

9 A. Well, again, we go back to the fact that the LEEPA law  
10 does not have provisions flowing from the LEEPA law to  
11 implement the ledgered remain involved in the  
12 transaction that we are proposing. So, that would have  
13 to be -- that would have to be -- that detail would  
14 have to be derived from the same process that we  
15 derived details similar to other groundbreaking  
16 developments in the energy delivery realm. So, we'd --  
17 that would have to be played out.

18 BY MR. FOSSUM:

19 Q. So, just so I'm clear, where the contract says that the  
20 "Seller will arrange for delivery", is your answer that  
21 you "do not know"?

22 A. I do not know.

23 MR. FOSSUM: Okay. Commissioners, I  
24 suppose at this point, I'd take a small diversion and ask

[WITNESS: Fromuth]

1 whether this might be a time to dismiss this case? The  
2 Petitioner has just indicated that he does not know how  
3 the contract that's before you would, in fact, be  
4 implemented. He simply doesn't know. He's proposed a  
5 deal with unknown parameters and unknown application. I  
6 fail to see what it is that the Commission can approve.

7 Oh, and has also been pointed out to me,  
8 on the data requests that we've gone through at least so  
9 far, he is the witness that's been provided by the  
10 Petitioner in this case, and has indicated that he is not  
11 the witness who can, in fact, testify to the -- how the  
12 answers were drafted.

13 I think we have a failure of a burden of  
14 proof already at this point.

15 CHAIRMAN HONIGBERG: Mr. Rodier, do you  
16 have -- we have an unusual mid-questioning motion to  
17 dismiss. Would you like to respond?

18 MR. RODIER: Sure. This is -- it is  
19 very extraordinary. We can provide this information on  
20 redirect. We can provide it in writing. The Commission  
21 has to keep in mind here that this is a 35 year-old law.  
22 The only person who's ever had anything to do with it is  
23 me, the *Cabletron* decision in '95. Nobody else has ever  
24 lifted a finger to try to implement this law.

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[WITNESS: Fromuth]

1                   We are trying to do it the best that we  
2                   can. Mr. Fromuth has said, we're here so that the  
3                   Commission can -- we've put a lot of detail in this.  
4                   We're asking the Commission, we will admit it, they have  
5                   already motioned for a rehearing on minutia that we didn't  
6                   specify. Nobody really knows, and nobody's ever been down  
7                   this path.

8                   And, so, what we're really looking for  
9                   here is a hearing. And, we think that one of the -- there  
10                  could be many possible outcomes here. The Commission  
11                  could ask people to work on the details further. We could  
12                  say "Okay, yes, maybe he's made a point there." By the  
13                  way, the seller is Fiske.

14                  I think the Commission's got the picture  
15                  here. And, these questions do not get into any of the big  
16                  issues here, like "has this law been repealed?"

17                  CHAIRMAN HONIGBERG: I would be  
18                  surprised if a question to Mr. Fromuth about "whether this  
19                  law has been effectively repealed?" would be answered by  
20                  him, a nonlawyer.

21                  MR. RODIER: Yes.

22                  CHAIRMAN HONIGBERG: So, is it fair to  
23                  say that your position is that there's a skeleton here,  
24                  and you're looking for meat to be put on the bones through

[WITNESS: Fromuth]

1 this proceeding?

2 MR. RODIER: Yes.

3 CHAIRMAN HONIGBERG: Does anyone else  
4 want to be heard? Mr. MacLeod.

5 MR. MacLEOD: As it pertains to Number  
6 7, as the seller, my understanding is that any  
7 arrangements we were to make with Public Service New  
8 Hampshire would have to be approved by the PUC. It's my  
9 understanding that the purpose of this hearing is to lead  
10 to the development of ways to do that.

11 CHAIRMAN HONIGBERG: Okay.

12 MR. MacLEOD: Am I wrong?

13 CHAIRMAN HONIGBERG: One of the cool  
14 things about being up here is I get to ask the questions.

15 (Laughter.)

16 CHAIRMAN HONIGBERG: So, we're not going  
17 to deal with that right now. I understand your position.

18 But, right now, I want to know if any  
19 other parties want to be heard on Mr. Fossum's motion?  
20 And, I'll come back to you, Mr. Fossum. I just want to be  
21 sure that everybody else has a shot, before we circle back  
22 to you.

23 *[No verbal response]*

24 CHAIRMAN HONIGBERG: Okay. Seeing none.

[WITNESS: Fromuth]

1 Hang on. Mr. Fossum, and then Commissioners may have  
2 questions. But, Mr. Fossum.

3 MR. FOSSUM: Thank you. I simply wanted  
4 to respond to the comments that Attorney Rodier has  
5 offered, that they "could provide information on redirect"  
6 or they "could provide information in writing". We're  
7 here at the hearing on the merits. We're here now. And,  
8 Freedom has the burden now, to demonstrate that it has a  
9 contract that is just, reasonable, consistent with the  
10 public good, and all of the other requirements that it  
11 might have to meet.

12 We have -- Freedom's only witness has  
13 already stated that he did not provide answers to  
14 discovery or that he's not the witness to do so, but he's  
15 the only witness who's here. And, he's stated that he  
16 doesn't know how this contract would actually work.

17 CHAIRMAN HONIGBERG: I understand. Mr.  
18 Hall, did you want to say something, I apologize?

19 MR. HALL: Yes. Liberty supports  
20 Eversource's motion, in view of the fact that the burden  
21 of proof is on FEL, and they haven't met that burden.  
22 Their position has changed on multiple occasions. And, in  
23 fact, we heard this morning that there's another change to  
24 the contract. So, it's difficult to determine what

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[WITNESS: Fromuth]

1 exactly we're dealing with, especially when changes are  
2 occurring, and, quite frankly, FEL doesn't know how it's  
3 going to implement this.

4 CHAIRMAN HONIGBERG: We're going to take  
5 a five-minute break. We'll be back at 11:00.

6 (Recess taken at 10:55 a.m. and the  
7 hearing resumed at 11:08 a.m.)

8 CHAIRMAN HONIGBERG: Thank you for your  
9 patience. While we understand the argument being made by  
10 Mr. Fossum, the motion is denied as premature.

11 Mr. Fossum, you may proceed.

12 MR. FOSSUM: Thank you.

13 BY MR. FOSSUM:

14 Q. Where did I leave off? So, just -- so, trying to find  
15 where to pick up here, I apologize. So, under this  
16 contract, however it is that delivery would be  
17 arranged, it would be the case that Eversource would  
18 have to actually deliver the energy from Fiske to  
19 Freedom's meter in Auburn, is that correct?

20 A. The physical movement of the power from Fiske to  
21 Freedom would be -- would occur over Eversource's  
22 network. That's correct.

23 Q. And, in your testimony, you request that the Commission  
24 order that Eversource transmit and deliver that power

[WITNESS: Fromuth]

1 at no cost to Freedom or Fiske, is that correct?

2 A. Yes.

3 Q. Does Eversource deliver energy to Freedom's office now?

4 A. Yes, it does.

5 Q. Does it do so for free?

6 A. No, it doesn't.

7 Q. And, who pays for Eversource to deliver that energy to  
8 Freedom's office?

9 A. Freedom does.

10 Q. And, Freedom is the end-user?

11 A. It is.

12 Q. Does Freedom currently take default service from  
13 Eversource?

14 A. No.

15 Q. So, Freedom currently buys energy from somebody other  
16 than Eversource?

17 A. Correct.

18 Q. But FEL -- I'm sorry, but Freedom still pays for the  
19 delivery of that energy?

20 A. It does.

21 Q. And, again, just to confirm, Freedom is proposing to  
22 purchase only energy from Fiske?

23 A. Purchasing only energy, yes.

24 Q. So, it's proposing to purchase the same thing that its

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[WITNESS: Fromuth]

1 energy supplier currently supplies?

2 A. Right. That's correct.

3 Q. But in that -- but, currently, you've testified that  
4 Freedom pays for delivery of that energy, but, under  
5 your proposed contract for the purchase of energy, it  
6 would not pay for that?

7 A. That's correct. We would be using a different statute  
8 to fulfill the transaction than the one we're currently  
9 operating under.

10 Q. Does anything change with Eversource's electric system  
11 as a result of this contract, if it was approved?

12 A. I don't know the answer to that.

13 Q. Have you reviewed the testimony that was filed by  
14 Mr. Labrecque in this docket?

15 A. I have, yes.

16 Q. I understand it hasn't yet been marked, but you can --

17 MR. FOSSUM: And, I suppose we can mark  
18 it now subject, to Mr. Labrecque's appearance later, or I  
19 could wait to do that. I guess I would defer to the  
20 Commission on --

21 CHAIRMAN HONIGBERG: I think it depends  
22 on how extensive a question you're about to get into. If  
23 all you want to do is ask him if he agrees with a  
24 statement or two, it's entirely up to you whether --

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[WITNESS: Fromuth]

1 you're free to mark it, but you don't have to, if all  
2 you're going to do is ask him "would you agree with the  
3 following statement?", or words to that effect.

4 MR. RODIER: Excuse me, Mr. Chairman?

5 CHAIRMAN HONIGBERG: Mr. Rodier, yes.

6 MR. RODIER: Yes. Sorry. Thank you.

7 Do you have a copy of it?

8 WITNESS FROMUTH: I do.

9 MR. RODIER: Okay.

10 MR. FOSSUM: I was intending only to  
11 ask, at least at the moment, whether he agrees with a  
12 statement that's contained in the document. So, I guess  
13 then, by your invitation, I would withhold marking it for  
14 now.

15 CHAIRMAN HONIGBERG: Sounds fair.

16 BY MR. FOSSUM:

17 Q. Do you have a copy of Mr. Labrecque's testimony?

18 A. I believe I do.

19 Q. Could you turn to what is marked as -- it's Bates Page  
20 "16 of 22".

21 MR. RODIER: I'm look at -- excuse me,  
22 Mr. Chairman, may I be heard?

23 CHAIRMAN HONIGBERG: Sure.

24 MR. RODIER: I'm looking at a copy of

[WITNESS: Fromuth]

1 the Rebuttal Testimony of Richard Labrecque, and it's  
2 got --

3 CHAIRMAN HONIGBERG: I think the page  
4 that Mr. Fossum is referring to is one -- is an  
5 attachment.

6 MR. RODIER: Oh, I'm sorry.

7 MR. FOSSUM: That's correct.

8 MR. RODIER: I'm very sorry.

9 CHAIRMAN HONIGBERG: Am I correct, Mr.  
10 Fossum, this is a discovery question response?

11 MR. FOSSUM: It is. The notation at the  
12 top is "Exhibit RCL-3". It is an attachment to the  
13 testimony, not the testimony itself.

14 MR. RODIER: Okay. Thank you.

15 CHAIRMAN HONIGBERG: But isn't it a  
16 discovery request and response?

17 MR. FOSSUM: Yes, it is.

18 CHAIRMAN HONIGBERG: So, it's really not  
19 the testimony -- well, maybe you're going to ask him about  
20 the testimony, but, at this moment, all you're asking him  
21 about is a discovery request and response, is that right?

22 MR. FOSSUM: That's correct. And, I  
23 chose to do it this way, because it was one that was  
24 already contained in prefiled testimony that I understood

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[WITNESS: Fromuth]

1 everybody would have, rather than attempt to introduce it  
2 separately.

3 CHAIRMAN HONIGBERG: All right. Go  
4 ahead. If there's some ambiguity that needs to be  
5 resolved by marking something or other, we can do that.  
6 But I think everybody is on the same page now.

7 BY MR. FOSSUM:

8 Q. And, Mr. Fromuth, as the Chairman has pointed out, what  
9 I'm referring you to is, it's noted at the top as  
10 "Exhibit RCL-3", and it's a response to PSNH's --  
11 Eversource's Discovery Question Number 11. Do you see  
12 that document?

13 A. Yes, I think I'm there.

14 Q. Again, I would ask, are you the respondent on this  
15 document?

16 A. I did not construct the response, but I approved it.

17 Q. I would just like to, for right now, I'd like to direct  
18 your attention to the first sentence of the last  
19 paragraph. Where it says that, essentially, "If Fiske  
20 were to sell some or all of its output, there would be  
21 no change in the level of electrical load at any point  
22 in the Eversource transmission system." Do you see  
23 that?

24 A. I do.

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[WITNESS: Fromuth]

1 Q. Do you agree with that statement?

2 A. Yes.

3 Q. So, is it your position then that nothing changes with  
4 respect to Eversource's electric system as a result of  
5 this transaction that you proposed?

6 A. Well, within the context of just this example, that's  
7 our point, yes.

8 Q. So, if nothing changes, is it still your position that,  
9 despite the fact that Freedom pays for delivery service  
10 now, it should not pay for delivery service if this  
11 contract was approved?

12 A. Well, nothing changes within the -- in the Eversource  
13 infrastructure. What has changed is that we're  
14 utilizing a different -- we're utilizing a different  
15 statute to govern our transaction, one that has not  
16 been utilized before, but one that requires fleshing  
17 out of the regulations and so forth to implement it.  
18 But we're simply talking about, whether the statute was  
19 passed in '78 or in 2008, it hasn't been used before.  
20 So, we're simply saying, given the system that we are  
21 operating under, this statute can be enabled by the  
22 transaction that we're proposing.

23 And, so, there's nothing mysterious  
24 about the other part of the answer. It's simply that

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[WITNESS: Fromuth]

1 we're trying to use a new statute to undertake a new  
2 kind of transaction.

3 Q. Since Freedom is proposing only to buy electricity --  
4 or, yes, electricity, and not capacity, from Fiske, how  
5 will that two percent of the capacity be handled, the  
6 unpurchased capacity?

7 MR. RODIER: Mr. Chairman, I'm sorry.  
8 May I be heard just very briefly?

9 CHAIRMAN HONIGBERG: Sure.

10 MR. RODIER: Okay. I've had an  
11 opportunity to refresh myself on the law. And, the law  
12 says "the PUC shall review and approve all contracts" --

13 *[Court reporter interruption.]*

14 CHAIRMAN HONIGBERG: If you're going to  
15 read, you need to slow down.

16 MR. RODIER: All right. Sorry.

17 CHAIRMAN HONIGBERG: But, just to be  
18 clear, are you objecting to the question that's been  
19 asked?

20 MR. RODIER: Yes. And, I'm going to say  
21 why, as a matter of law, I'm objecting.

22 CHAIRMAN HONIGBERG: Okay.

23 MR. RODIER: So, I am looking at RSA  
24 362-A:2-a, "Purchase of Output by Private Sector".

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[WITNESS: Fromuth]

1 CHAIRMAN HONIGBERG: Slow down.

2 MR. RODIER: And, I have a copy of it  
3 here, okay?

4 CHAIRMAN HONIGBERG: If you want to put  
5 it on the record for Mr. Patnaude to get it down, and  
6 you're reading it, you need to read slowly.

7 MR. RODIER: I got it. Subparagraph I,  
8 in part, says "The Public Utilities Commission shall  
9 review and approve all contracts concerning a retail sale  
10 of electricity pursuant to this section. The Commission  
11 shall not set the terms of such contracts but may  
12 disapprove any contract which in its judgment: Fails to  
13 protect both parties against excessive liability or undue  
14 risk, or entails substantial cost or risk to the electric  
15 utility whose franchise [service] area the sale takes  
16 place, or is inconsistent with the public good."

17 So, that we have a contract here between  
18 a willing buyer --

19 CHAIRMAN HONIGBERG: What was the  
20 question? Mr. Rodier, do you remember what the question  
21 was?

22 *[No verbal response]*

23 CHAIRMAN HONIGBERG: Neither do I.  
24 Mr. Fossum, what was the question?

[WITNESS: Fromuth]

1 MR. FOSSUM: The question was that, in  
2 light of Mr. Fromuth's testimony, that the Agreement here  
3 would be for 98 per -- or, I'm sorry, would be for Freedom  
4 to purchase two percent of the energy only, and 0 percent  
5 of the capacity from Fiske, what happens with the  
6 two percent of capacity, how is that handled?

7 CHAIRMAN HONIGBERG: Mr. Rodier, what is  
8 the basis for your objection?

9 MR. RODIER: The basis, Mr. Chairman, is  
10 the Commission -- we have a situation here where we have a  
11 willing seller and a willing buyer, it says "the  
12 Commission shall review and approve that contract",  
13 subject to very broad standards, "fails to protect both  
14 parties", "entails substantial cost or risk to the  
15 electric utility", and "is inconsistent with the public  
16 good".

17 CHAIRMAN HONIGBERG: Is it your -- is  
18 the basis for your objection that the question assumes a  
19 state of the law with which you disagree?

20 MR. RODIER: Yes.

21 CHAIRMAN HONIGBERG: Overruled. You may  
22 answer the question, if you're able. That means you're  
23 up, Mr. Fromuth.

24 MR. FOSSUM: Shall I re-ask it?

[WITNESS: Fromuth]

1 **BY THE WITNESS:**

2 A. The capacity would not be bought by FEL, and the  
3 capacity would simply be unassigned capacity. So,  
4 we -- our agreement is for the energy, and it's not for  
5 the capacity. So, the capacity would not flow to us.  
6 It would -- I don't know what would become of it, but  
7 it would be uncompensated capacity, perhaps.

8 BY MR. FOSSUM:

9 Q. So, I suppose, to ask it a different way, if, under  
10 this contract, Freedom is going to avoid paying for all  
11 the delivery charges, how would the capacity get paid  
12 for?

13 A. The short answer is, I, sitting here right now, can't  
14 opine as to how the capacity would get paid for. But  
15 there's plenty of capacity on the system that's  
16 provided by third parties to the system, for which  
17 there isn't any compensation presently. There's no  
18 scheme to do so. It's not been ironed out. And,  
19 certainly, in this situation, an issue like that could  
20 easily be tossed into the hands of the technocrats that  
21 work for the PUC, the PUC Staff, to develop a policy  
22 and a practice and a procedure for addressing the  
23 capacity issue. I think it's important, but I don't  
24 think it's one that is a barrier to whether or not this

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1 a workable arrangement.

2 Q. So, if I understand correctly, you believe that it's an  
3 important issue, but one that should be later developed  
4 by the PUC Staff?

5 A. Or the parties to the transaction, subject to the  
6 approval by the PUC.

7 Q. Then, if I understand, you're asking then that this  
8 contract be approved, subject to some later further  
9 approvals?

10 A. Well, there are elements of the contract that  
11 require -- well, the contract itself needs to be  
12 approved by the Commission before it can be acted on by  
13 the parties.

14 So, you had pointed out one of the  
15 elements in the contract that's not addressed, the  
16 Commission could possibly say to the parties involved  
17 "address this particular open issue, as well as others,  
18 and then come back to us with your version of this as  
19 to how it should play out, and we'll give you a yea or  
20 nay."

21 MR. FOSSUM: I'm hesitant to do so, but  
22 I feel the need to renew my motion at this point.

23 CHAIRMAN HONIGBERG: Denied as  
24 premature.

[WITNESS: Fromuth]

1 MR. FOSSUM: So be it.

2 BY MR. FOSSUM:

3 Q. Is it your testimony, Mr. Fromuth, that Eversource  
4 would recover less distribution revenue, if this  
5 contract and this proposal was approved?

6 A. Yes. We have said that that is a -- that's an impact  
7 of this contract.

8 Q. Is there a proposal for how Eversource would recover  
9 the revenue that it might lose as a result of this  
10 contract being approved?

11 A. We have observed that there's a process in place now  
12 that Eversource utilizes to recover lost transmission  
13 and stranded cost revenue, either through the  
14 reconciliation of such costs in the next docket --  
15 docketed proceeding on that matter, or through a future  
16 distribution rate case. Either way would be an  
17 approach that Eversource I believe has said in other  
18 proceedings is how they would go about doing that.

19 Q. So, is it your testimony today that Eversource's  
20 recovery of distribution revenue should be through some  
21 future rate case?

22 A. Basically, yes.

23 Q. And, Mr. Bersak is gathering a few extra copies, I have  
24 a discovery response I'd like to show you. It's

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[WITNESS: Fromuth]

1 Freedom's response to Liberty's Question 12.

2 CHAIRMAN HONIGBERG: This will be marked  
3 as "Exhibit 4".

4 (The document, as described, was  
5 herewith marked as **Exhibit 4** for  
6 identification.)

7 (Atty. Bersak and Atty. Fossum  
8 distributing documents.)

9 BY MR. FOSSUM:

10 Q. And, again, Mr. Fromuth, I would ask, are you the  
11 respondent on that question?

12 A. I did not construct the response, but I approved it.

13 Q. So, do you agree with -- so, that question stated that  
14 or asked whether or how Eversource might recover lost  
15 distribution revenue? And, could you read what was  
16 provided as Freedom's response to that please.

17 A. "Eversource will receive lower revenue from FEL as a  
18 result of the proposed transaction. Eversource would  
19 recover the lost revenue in a manner similar to that  
20 proposed by Unitil in DE 15-147."

21 Q. Do you know what method Unitil has proposed in Docket  
22 DE 15-147?

23 A. I believe it's a systemwide collection through its rate  
24 base, sort of a socialization of the recovery, but I'm

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1 not sure.

2 Q. I guess I should back up one question, in light of your  
3 statement about being the respondent. Do you agree  
4 with that response as you sit here today?

5 A. Yes.

6 Q. Has the PUC, the Commission, approved that recovery  
7 method that's been proposed by Unitil, if you know?

8 A. I don't know.

9 Q. Is that recovery method equivalent to a distribution  
10 rate case?

11 A. Again, I'm not -- I don't know the subject matter well  
12 enough to answer that.

13 Q. Would you agree that that method, whatever it might be,  
14 is likely not the same as a distribution rate case, a  
15 full distribution rate case?

16 A. Again, I can't answer that.

17 Q. Is the recovery method, if you know, that Unitil has  
18 proposed in Docket DE 15-148 permitted for transactions  
19 under the statute that we're working under today?

20 A. I think it's "147", is what I have here.

21 Q. I apologize, for 15-147. Is that recovery method  
22 permitted under this statute?

23 A. Again, I can't answer that. I don't practice in that  
24 realm.

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[WITNESS: Fromuth]

1 Q. So, just to close this out then. So, you stated that  
2 you agreed with that response, that Eversource would  
3 recover any lost revenue equivalent to the proposal  
4 that Unitil has made, or at least in a manner similar  
5 to that, but this morning you've testified that  
6 "Eversource would recover its lost revenue through a  
7 distribution rate case." Is that an accurate  
8 statement?

9 A. That's an example that I provided as to how Eversource  
10 could recover, yes.

11 Q. Mr. Fromuth, in your testimony, you state that you were  
12 "formerly the Vice Chairman of the NEPOOL Participants  
13 Committee and Chair of the End User Sector", is that  
14 correct?

15 A. Yes.

16 Q. When were you -- when did you hold those positions?

17 A. From the years 2000 -- I believe 2011 through 2014.

18 Q. And, in those positions, would you say that you're very  
19 familiar with the rules and the regulations of ISO?

20 A. Well, I knew where to go to find answers. I wouldn't  
21 say that I was very familiar with them, because they're  
22 vast, complex, and ever-changing.

23 Q. Is the transaction that you've proposed today  
24 consistent with the regulations and rules of the ISO

[WITNESS: Fromuth]

1 and the FERC, so much as you understand them?

2 A. Well, the answer I would give is that they're not  
3 inconsistent with them, because it is a transaction  
4 that would take place with inside a single utility  
5 franchise footprint, and within a state which has  
6 sovereignty, the PUC and the state have sovereignty  
7 over transactions within the state and -- of  
8 transactions of this manner, between end-user and  
9 generator.

10 Q. But I believe, at the start of your response, you said  
11 that you believe it's "not inconsistent". So, are you  
12 saying "it is consistent"?

13 A. Well, I don't know of any friction between what's being  
14 proposed here and the imposition of systemwide, the  
15 OATT, for instance, is not violated or in any way  
16 transgressed when that question was asked by us of  
17 folks at the ISO early on in this process. And, they  
18 opined that they saw no issues that implied or  
19 conflicted with the OATT.

20 Q. So, you've consulted with the ISO on this?

21 A. Informally.

22 Q. Do you have any documentation of that?

23 A. No, I don't.

24 Q. Is there anyone from the ISO who is intending to file

[WITNESS: Fromuth]

1 any testimony or otherwise provide any information in  
2 this docket?

3 A. Not that I'm aware.

4 Q. So, today, it's simply your statement that you spoke  
5 with them and that they told you there was nothing  
6 conflicting?

7 A. Well, that's -- I'm testifying to that, yes. Uh-huh.

8 Q. In Freedom's Motion to Dismiss -- or, I'm sorry, I  
9 apologize. In Freedom's objection to Eversource's  
10 Motion to Dismiss, did you read that document?

11 A. I'm sorry, would you repeat the question.

12 Q. There was an object -- Eversource had filed a Motion to  
13 Dismiss this docket some months ago. Do you recall  
14 that?

15 A. I do.

16 Q. And, Freedom objected to that motion. Do you recall  
17 that?

18 A. Correct. Yes. Uh-huh.

19 Q. And, have you reviewed that document, the objection,  
20 that is?

21 A. I have.

22 Q. In that objection, did Freedom concede that  
23 Eversource's transmission system would be used in this  
24 transaction?

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[WITNESS: Fromuth]

1 A. That's a fine point that I can't answer right now  
2 without consulting with the document.

3 Q. Subject to check, would you agree that it did or would  
4 you like -- would you still insist on seeing the  
5 document?

6 A. No, I would need to see. I don't recall whether or not  
7 that was in there.

8 CHAIRMAN HONIGBERG: Is it a matter of  
9 dispute?

10 MR. FOSSUM: I guess that I could ask it  
11 that way.

12 BY MR. FOSSUM:

13 Q. Would you agree, as you sit here, that this transaction  
14 would require the use of Eversource's transmission  
15 system?

16 A. I know that Eversource has stated, as recently as in  
17 the technical session last week, that the transaction  
18 would require the use of their transmission system.  
19 I'm not aware as to whether or not I was aware of that  
20 prior to last week. But, again, I'm searching my  
21 memory. But I think last week was when I first learned  
22 of that position of Eversource.

23 CHAIRMAN HONIGBERG: All right.

24 Mr. Fossum, why don't you pull out the objection.

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[WITNESS: Fromuth]

1 MR. FOSSUM: I'm attempting to do so.  
2 I've lost myself in my papers. My apologies.

3 MR. RODIER: Mr. Chairman, I wrote that.  
4 And, --

5 CHAIRMAN HONIGBERG: Well, are you  
6 willing to stipulate that this transaction would require  
7 the use of Eversource's transmission system?

8 MR. RODIER: Yes.

9 CHAIRMAN HONIGBERG: We good,  
10 Mr. Fossum, on that point?

11 MR. FOSSUM: We are. Thank you.

12 CHAIRMAN HONIGBERG: All right. Thank  
13 you, Mr. Rodier.

14 MR. FOSSUM: I appreciate that. That  
15 speeds things along. And, I apologize.

16 MR. RODIER: Mr. Chairman, I said that  
17 at the workshop last week. There's a lot of questions  
18 here today we answered at the workshop.

19 CHAIRMAN HONIGBERG: But we're not  
20 there.

21 MR. RODIER: True.

22 CHAIRMAN HONIGBERG: So, you also  
23 sometimes need to repeat that for our benefit, --

24 MR. RODIER: Okay. All right.

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[WITNESS: Fromuth]

1 CHAIRMAN HONIGBERG: -- because we  
2 haven't heard it before.

3 MR. RODIER: Okay.

4 BY MR. FOSSUM:

5 Q. Mr. Fromuth, are you familiar with FERC Order 888?

6 A. Not by its numerical designation. Maybe there's some  
7 other way in which you can jog my memory, subject  
8 matter and so forth?

9 Q. In that case, are you aware of an order issued in 1996  
10 by the FERC, relative to unbundled retail transactions?

11 MR. RODIER: Mr. Chairman, I'm going to  
12 have to object. This is a factual witness. He's a  
13 technical witness. He's a businessman. These are  
14 questions of law that --

15 CHAIRMAN HONIGBERG: Not yet. It isn't  
16 a question of law yet.

17 MR. RODIER: Okay.

18 CHAIRMAN HONIGBERG: He may get there.

19 MR. RODIER: Okay. Thank you.

20 CHAIRMAN HONIGBERG: But, at this point,  
21 I think all he wanted to know was is he familiar with the  
22 FERC order that I assume he described as "888", but I  
23 don't know that. Mr. Fromuth, do you understand the  
24 question?



[WITNESS: Fromuth]

1 WITNESS FROMUTH: I do.

2 CHAIRMAN HONIGBERG: Can you answer it?

3 WITNESS FROMUTH: Yes. I'm not familiar  
4 with that.

5 BY MR. FOSSUM:

6 Q. And, I've been reminded, the title of the order may --  
7 and perhaps this might jog your recollection. Are you  
8 aware of an order issued that was titled "Promoting  
9 Wholesale Competition through Open Access  
10 Nondiscriminatory Transmission Services by Public  
11 Utilities; Recovery of Stranded Costs by Public  
12 Utilities and Transmitting Utilities". Does that title  
13 mean anything to you?

14 A. Yes, it does.

15 Q. So, you are aware of that order?

16 A. Now that you described it more fully, yes, I am.

17 Q. And, would you agree that that order was decided after  
18 the enactment of this state's LEEPA law?

19 A. Yes. The LEEPA law was '78 or so, and this FERC order  
20 in the late '90s. Yes, the FERC order is after LEEPA  
21 law.

22 Q. Was it also subsequent to the Commission's -- to this  
23 Commission's *Cabletron* decision that you reference in  
24 your testimony?

[WITNESS: Fromuth]

1 MR. RODIER: Mr. Fromuth, only if you  
2 know, please.

3 **BY THE WITNESS:**

4 A. Yes, I'm not sure, Mr. Fossum, whether it is or not.  
5 The date's the date. So, whatever it is, you know, I'm  
6 not sure of the answer to that.

7 CHAIRMAN HONIGBERG: Mr. Rodier, Mr.  
8 Fromuth is very capable of knowing when he doesn't know  
9 the answer to something.

10 MR. RODIER: Okay. I won't do that  
11 again then.

12 BY MR. FOSSUM:

13 Q. Since you've indicated that you're aware of the order,  
14 were you aware, are you aware that what -- that, in  
15 that order, what the FERC described as an "unbundled  
16 transaction", are you aware of that description?

17 A. I'm aware of what is generally considered and  
18 characterized in the industry as an "unbundled  
19 transaction". I am not aware of the actual FERC  
20 language, I can't recall it to mind now, describing it.  
21 But, obviously, it launched what we have today  
22 throughout the country. So, I have some familiarity  
23 with it.

24 Q. Are you aware that, as part of that order, the FERC

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1 concluded that it has exclusive jurisdiction over the  
2 rates, terms and conditions of unbundled transmission  
3 in interstate commerce?

4 A. I'm not personally aware of that, but that sounds  
5 plausible.

6 Q. And, are you aware that, as part of that order, the  
7 FERC referred to these unbundled transactions as  
8 "retail wheeling in interstate commerce", are you aware  
9 of that?

10 A. No, I'm not aware of that.

11 Q. Do you have any knowledge of the United States Supreme  
12 Court decision in *New York v. FERC*?

13 A. No.

14 Q. In 2002? You're not aware of that decision?

15 A. I'm not.

16 Q. So, you're not aware then of the United States Supreme  
17 Court's ruling about -- relative to FERC's assertion of  
18 jurisdiction over such unbundled transactions?

19 A. I am not.

20 Q. In your testimony, you've referenced the 1995 *Cabletron*  
21 decision, but you do not, to my reading, reference the  
22 FERC order that we were just discussing. Is there a  
23 reason that it doesn't mention that order?

24 A. No reason in particular. There's quite a few things

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[WITNESS: Fromuth]

1 that could have been cited. But, I think, in terms  
2 just an economy of trying to keep the submission from  
3 being unduly lengthy, lots of things were left on the  
4 cutting room floor.

5 Q. Mr. Fromuth, on Page 2 of your testimony, you provide  
6 what you've given as -- there's a title there that  
7 states "Summary of Applicable Law". Do you see that?

8 A. I do.

9 Q. In that summary, do you reference any laws or decisions  
10 of the FERC?

11 A. No.

12 CHAIRMAN HONIGBERG: Mr. Fossum, help me  
13 out here. Where are you going with this?

14 MR. FOSSUM: No further.

15 CHAIRMAN HONIGBERG: Okay.

16 MR. FOSSUM: That was my last question.

17 BY MR. FOSSUM:

18 Q. Mr. Fromuth, as part of this proposed transaction,  
19 would PS -- or, I'm sorry, would Eversource -- I do it  
20 -- would Eversource's Stranded Cost Charge be  
21 collected?

22 A. No.

23 Q. Is the -- if you know, is the Stranded Cost Charge, by  
24 law, a non-bypassable charge?

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1 A. I believe it is non-bypassable.

2 Q. And, you're stating this morning that it would  
3 nevertheless not be collected as part of this  
4 transaction?

5 CHAIRMAN HONIGBERG: That is what he  
6 said.

7 MR. FOSSUM: Thank you.

8 BY MR. FOSSUM:

9 Q. Was the -- that Stranded Cost Charge, if you know, was  
10 that enacted as part of what is now referred to as "RSA  
11 Chapter 374-F"?

12 A. I'm sorry, I don't know the statute under which it was  
13 enacted.

14 Q. If I referred to it as the "Restructuring statute",  
15 would you agree that it was included as part of that  
16 law, to the best of your knowledge?

17 A. Again, I have no encyclopedic knowledge of all the  
18 elements of that law. So, I'd just have to pass on  
19 that.

20 Q. Okay. Referring back to your testimony, at Page 3, it  
21 states that "Fiske received a grant from this  
22 Commission to increase its generating capacity". Do  
23 you see that portion of your testimony, midway down  
24 Page 3?

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1 A. Yes.

2 Q. And, it states that Fiske received approximately -- or,  
3 "was awarded a grant of \$225,000". Do you see that  
4 portion of your testimony?

5 A. I do.

6 Q. Do you know where that grant money came from?

7 A. I think it came from -- I'm not sure, I think it came  
8 from the RGGI collections.

9 Q. So, subject to check, would you agree that that grant  
10 was funded by the Renewable Energy Fund?

11 A. Well, no, the RGGI income is not from the Renewable  
12 Energy Fund. The RGGI income is the carbon tax  
13 collection process.

14 Q. I understand. I'm asking whether you would agree that,  
15 rather than the RGGI fund, it indeed came from the  
16 Renewable Energy Fund?

17 CHAIRMAN HONIGBERG: Mr. Fromuth, he's  
18 suggesting that you're incorrect.

19 WITNESS FROMUTH: Oh. Okay.

20 CHAIRMAN HONIGBERG: And, I think  
21 there's a number of people in the room who could probably  
22 confirm whether you're right or wrong. If you don't  
23 know, --

24 WITNESS FROMUTH: Yes, I --

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1 CHAIRMAN HONIGBERG: -- maybe you should  
2 say you "don't know". Maybe Mr. Fossum could ask us to  
3 take administrative notice of certain facts that a lot of  
4 people in the room do know, and I think Mr. Rodier  
5 probably knows as well.

6 MR. RODIER: It's in his testimony.

7 CHAIRMAN HONIGBERG: It came from the  
8 REF, is that what it said? I haven't looked at his  
9 testimony to --

10 MR. RODIER: It said the grant's from --  
11 he said the grant's from the Commission.

12 CHAIRMAN HONIGBERG: Yes. But  
13 Mr. Fossum is asking "what the source of the funds was?"

14 MR. RODIER: Sorry.

15 CHAIRMAN HONIGBERG: Mr. Fossum, are you  
16 asking us to take administrative notice that that grant  
17 came from the Renewable Energy Fund?

18 MR. FOSSUM: Given your invitation,  
19 absolutely, that is what I'm asking.

20 CHAIRMAN HONIGBERG: Is there any  
21 objection to that?

22 *[No verbal response]*

23 CHAIRMAN HONIGBERG: All right.

24 *[Administrative notice taken.]*

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1 CHAIRMAN HONIGBERG: You may proceed.

2 BY MR. FOSSUM:

3 Q. Mr. Fromuth, do you know how the Renewable Energy Fund  
4 gets funded? Do you know where that money comes from?

5 A. Yes.

6 Q. And, where is that?

7 A. It's through compliance with the Portfolio Standard  
8 requirements that are imposed upon competitive energy  
9 providers. They have to file a compliance document  
10 yearly, which demonstrates that they have, in their  
11 energy procurement purchases, included a certain  
12 percentage of energy from renewable energy sources.

13 Q. And, would that fund be funded as part of this  
14 transaction? Would there be a payment to that fund as  
15 part of this transaction?

16 A. No. The structure of this transaction does not include  
17 a REC requirement in the transaction. But, again, the  
18 transaction is light on those details, because they  
19 haven't been hammered out. But, right now, no, there  
20 would be no inclusion of that fee or collection of  
21 that -- of that revenue in the transaction.

22 Q. So, is it your testimony then that projects, like  
23 Fiske, should be able to access grants from the  
24 Commission that are funded by a fund that won't be paid

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[WITNESS: Fromuth]

1 into by -- as a result of this transaction?

2 A. Well, there's no pre-sentiment or a pre-bias to include  
3 or exclude certain revenue streams from being satisfied  
4 by the transaction. The transaction does not address  
5 that, because we are not at that point in developing  
6 the details of the transaction. They can certainly be  
7 fleshed out down the road to account for whether or not  
8 that should be included.

9 But Fiske is a renewable energy  
10 producer, and every kilowatt-hour it generates is from  
11 hydro. So, it makes a lot of sense for Fiske to be an  
12 applicant -- a successful applicant for a grant coming  
13 from the REC fund.

14 Q. And, that's regardless of whether it pays into that  
15 fund?

16 A. Well, the parties that buy the energy are the parties  
17 that buy the RECs from Fiske. The REC income from  
18 making hydro or from making any sustainable energy is  
19 poured into the fund. So, it's not -- we're not  
20 proposing one -- an action that would exclude that.  
21 We're simply saying it's not fleshed out.

22 Q. Could I ask you to turn to -- back to Mr. Labrecque's  
23 testimony. My understanding is you have a copy of it.

24 CHAIRMAN HONIGBERG: Mr. Fossum, while

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1 we're doing that, how much more do you think you have?

2 MR. FOSSUM: Just a few more.

3 CHAIRMAN HONIGBERG: Okay.

4 BY MR. FOSSUM:

5 Q. And, in particular, if you could turn to what is Bates  
6 Page "20 of 22".

7 A. I don't have "Page 20 of 22". It goes up to "19".

8 Q. I can provide you with it.

9 MR. RODIER: Sorry.

10 (Chairman Honigberg handing document to  
11 Witness Fromuth.)

12 WITNESS FROMUTH: Thank you.

13 BY MR. FOSSUM:

14 Q. I'd begin, so, this is noted at the top as "Exhibit  
15 RCL-5", an exhibit to Mr. Labrecque's testimony. And,  
16 it shows a printout from the Freedom Energy Logistics'  
17 webpage. Is that an accurate description of this  
18 exhibit?

19 A. The printout actually is a printout, from what I can  
20 see here, of a newspaper story covering the subject  
21 matter at hand. So, that's what I have on my printout.

22 Q. Could you look down at the bottom of the page, there's  
23 a URL there?

24 A. Oh, I see. Yes.

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[WITNESS: Fromuth]

1 Q. So, that indicates that this came from Freedom Energy's  
2 website. Will you agree with me that this is from  
3 Freedom Energy's website?

4 A. Yes. What's been done here is I guess we uploaded the  
5 story, the Union Leader story to our website.

6 Q. I see. Now, at the top of Page 20 of 22, there's a  
7 sentence that reads "The idea is to create a test case  
8 that will force the PUC to finally rule on the  
9 mechanics of how the law could actually work." Did I  
10 read that accurately?

11 A. Yes.

12 Q. The "test case" that that's referring to, is that this  
13 docket?

14 A. I think that's a reasonable assumption, yes. Uh-huh.

15 Q. And, "the law" that it's referring to is the LEEPA law  
16 that we're talking about today?

17 A. Right.

18 Q. Do you agree with the statement that this is intended  
19 to be "a test case", and that future transactions would  
20 be forthcoming?

21 A. Yes. I think that's fair.

22 Q. So, turning back to your statements a few moments ago,  
23 relative to the payments into the Renewable Energy  
24 Fund, whatever that might ultimately be worked out to

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1 be, would that affect those future transactions as  
2 well?

3 A. I think that's a -- there's a lot of ambiguity there.  
4 And, I think that it's highly speculative as to what  
5 would happen to the fund as a result of these  
6 transactions. I really don't want to offer an opinion,  
7 because I don't know the answer.

8 Q. Okay. Just a few more questions. You've testified  
9 already about this recovery of the Stranded Cost  
10 Charge. Are you aware of an Eversource charge that's  
11 referred to as the "RRB charge"?

12 MR. RODIER: Mr. Chairman, I object to  
13 the question. It's a question of law.

14 CHAIRMAN HONIGBERG: "Is he familiar  
15 with PS" -- I'm sorry, I did it, too -- "Eversource's RRB  
16 charge?" I think he can answer that.

17 MR. RODIER: Okay.

18 **BY THE WITNESS:**

19 A. I don't know what "RRB" stands for. Maybe that would  
20 be illuminated for me.

21 BY MR. FOSSUM:

22 Q. "RRB", if I described it as the "Rate Reduction Bond  
23 charge", are you familiar with that?

24 A. No.

[WITNESS: Fromuth]

1 Q. You're not familiar with it. Assuming that there is  
2 such a charge, would that charge be collected as part  
3 of this transaction?

4 A. I just don't know.

5 Q. Okay. Mr. Fromuth, are you -- I believe I've already  
6 asked you whether you're familiar with the  
7 restructuring law. Are you familiar with a portion of  
8 that law having to do with a statement that "rules  
9 governing market activity should apply to all buyers  
10 and sellers in a fair manner"? Are you familiar with  
11 that statement that's part of the law?

12 A. I am not.

13 Q. You're not familiar with that statement?

14 A. No.

15 Q. As part of this transaction, would the Systems Benefit  
16 Charge be collected?

17 A. Again, that's a detail that would have to be worked out  
18 by the parties, subsequent to some direction from the  
19 PUC.

20 Q. And, finally, would the state Electricity Consumption  
21 Tax be collected as part of this transaction?

22 A. I would give the same -- well, I think that the -- any  
23 tax that was levied would, obviously, show up first as  
24 not being eliminated by a new approach to transactions

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[WITNESS: Fromuth]

1 within the grid, the PSNH grid. I think that taxes  
2 have a way of surviving no matter what happens.

3 Q. And, I'm asking specifically about this transaction,  
4 would the Electricity Consumption Tax be collected?

5 A. Well, again, I'm not an attorney, but, as I said, I  
6 would imagine that any taxes that are now currently  
7 levied would survive any alteration in how we undertake  
8 our transactions.

9 Q. I don't mean to belabor the point. I understand that  
10 the tax itself may survive, but would it be collected  
11 as part of this transaction?

12 A. I don't know how else I can answer, except to say that  
13 I would expect that it would, because taxes survive, no  
14 matter how you alter commercial transactions, taxes are  
15 still levied. So, I would expect it would still be in  
16 there.

17 MR. FOSSUM: Thank you. That will do.  
18 I have nothing further.

19 CHAIRMAN HONIGBERG: Mr. Hall, do you  
20 have any questions?

21 MR. HALL: Yes, I do. Just a few.

22 BY MR. HALL:

23 Q. Mr. Fromuth, as I listened to your testimony this  
24 morning, I'm getting the impression that there are many

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1 details that have yet to be worked out. Things like  
2 the discussion you just had regarding taxes, regarding  
3 the System Benefits Charge, regarding the Stranded Cost  
4 Recovery Charge, regarding the amount or the percentage  
5 of the output that FEL will purchase, regarding the  
6 delivery by Eversource of the power. My question is,  
7 when do all these details get worked out?

8 A. Well, we have a process here that we're going through  
9 that has the cart going before the horse. And, in  
10 order for us to establish that we are involved and  
11 embarked upon a legitimate change in -- well, a  
12 legitimate approach to altering what has heretofore  
13 have been pretty standard practices in the commercial  
14 side of buying and selling of electricity, we have --  
15 we're prepared to make a great investment of time and  
16 effort to address all of those issues.

17 But, at this point, the big boulder is  
18 determining whether or not the PUC will give the green  
19 light to proceeding with a LEEPA-sanctioned  
20 transaction. And, once that occurs, then we would fill  
21 in the blanks or come up with the details to satisfy  
22 all those other issues you just recited, as well as  
23 others.

24 Q. Okay. So, you're saying, effectively, you're asking

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1 the Commission to approve the contract. Once the  
2 contract is approved, these details get worked out  
3 later on. Is that correct?

4 A. Well, I think that, with all due respect to the  
5 Commission's process, I think the Commission would be  
6 more likely to say "You're on the right track. Provide  
7 us with more details. And, we will withhold our  
8 judgment as to whether or not this contract or this  
9 proposal can be activated, once we see those finer  
10 points." I think that's probably how it's more likely  
11 to play out.

12 Q. Now I'm really confused. You're asking the Commission  
13 to approve the contract, but then withhold judgment as  
14 to whether the contract can be implemented until the  
15 details are worked out?

16 A. I think the Commission is quite able to take and embark  
17 upon small steps, small approval steps, incremental  
18 approval steps, and say "You're on the right track,  
19 from the standpoint of a *prima facie* example of how  
20 this would look. We're okay with it, but we need more  
21 details on this, this, and this. Huddle with Staff,  
22 with your collaborators, and come up with more details  
23 for us to act on."

24 Q. Do you think the Commission should include Eversource

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1 in those discussions?

2 A. Absolutely.

3 Q. Okay. Now, I believe you -- I believe FEL admits that  
4 nothing is going to change as a result of this  
5 transaction with respect to the amount of generation or  
6 the load on any point in Eversource's system, and that  
7 power will flow the same way. Is that correct?

8 A. That's what we have stated.

9 Q. Okay. So, nothing changes, but the substantive change  
10 is that the bill that FEL receives from Eversource for  
11 delivery service is reduced. Is that correct?

12 A. That is correct.

13 Q. Okay. When you talk about the purchase of the output,  
14 the five percent of the output -- I'm sorry,  
15 two percent of the output of Fiske Hydro, you talk  
16 about a monthly amount where, if I understand it  
17 correctly, Eversource is to look at the monthly output  
18 of Fiske Hydro, take two percent of that, and credit  
19 that two percent to the kilowatt-hours that FEL  
20 consumes in Auburn, correct?

21 A. Correct.

22 Q. Okay. Is that amount time-differentiated? In other  
23 words, if Fiske Hydro generates all of its output at a  
24 time when FEL takes little or no power, and if there is

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1 no generation by Fiske Hydro at a time when FEL takes  
2 most of its power, you're still netting things out on a  
3 month -- you're still proposing that things be netted  
4 out on a monthly basis, correct? It's not an  
5 hour-by-hour comparison?

6 A. Right. FEL's account is an entire schedule that is a  
7 profiled account, as opposed to an interval account.  
8 So, the reading is done monthly of the meter, and the  
9 meter reading each monthly would then be load-balanced,  
10 if you will, between the Fiske output and the FEL load.

11 Q. Okay. Is this arrangement net metering?

12 A. I'm sorry?

13 Q. Is this arrangement net metering?

14 A. No, it's not.

15 Q. And, why is that? And, the reason, the context of my  
16 question is that you're proposing that the output --  
17 the amount that FEL purchases from Fiske and FEL's load  
18 be compared on a monthly basis, rather than on an  
19 hourly basis. Isn't that what net metering does?

20 A. That's one of the aspects of net metering. But you  
21 can't compare it on an hourly basis, because there is  
22 no mechanism in the metering technology, in the  
23 metering that we have in front place now to accomplish  
24 that.

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1 Q. And, since the metering doesn't exist, doesn't this  
2 result in a net metering application?

3 A. Well, first of all, I'm not sure that I would agree  
4 that "metering does not exist". We have metering.  
5 And, the metering mechanism is defined by the rate  
6 class that we are in with PSNH. So, therefore, to move  
7 beyond the arrangement, we're trying to structure an  
8 arrangement that doesn't require any alteration in the  
9 current conduct of our metering or on the metering on  
10 the other end.

11 So, changing the metering or changing  
12 our tariff class, all of that is, of course, a further  
13 wrinkle or further complication that would bog this  
14 down. So, I think we have a pretty simple transaction  
15 that would -- to be handled with an existing -- within  
16 the existing framework.

17 Q. And, by not altering that metering arrangement, is the  
18 effect the same as if this were net metered?

19 A. Well, I think there's -- there may be some  
20 similarities. But, obviously, it's not a net metering  
21 transaction, it's a LEEPA transaction.

22 Q. Okay. So, the net effect is the same, but it's not net  
23 metering?

24 A. No. I said "there are some similarities to net

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1 metering."

2 Q. Is one of those similarities the net amount of energy  
3 for which FEL is charged by Eversource for delivery?

4 A. Well, the net amount of energy that's charged is,  
5 again, it adheres to the model that we structured in  
6 the Agreement, which is two percent of their output,  
7 subject to the changes that have occurred since then.  
8 So, we are not in a position to evaluate whether or not  
9 there is a perfect match between the metered output of  
10 Fiske and the metered load of FEL. That's in the "to  
11 be determined" bucket.

12 Q. Okay.

13 A. All we're saying is that the output of Fiske and the  
14 load of FEL will hover around two percent.

15 Q. Okay. And, the loss in kilowatt-hour sales by  
16 Eversource impacts various components, various rate  
17 components. It impacts transmission, it impacts  
18 stranded cost recovery, and it impacts distribution.  
19 And, I believe earlier you had a discussion with  
20 Mr. Fossum that the revenue loss that Eversource  
21 realizes -- the distribution revenue loss that  
22 Eversource realizes, as a result of this transaction,  
23 gets recovered by Eversource either through a rate case  
24 or in the manner proposed by Unitil in their net

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1 metering docket, 15-147. Did I understand that  
2 correctly?

3 A. You did.

4 Q. Okay. Would you agree that the transmission and  
5 stranded cost recovery revenue loss gets immediately  
6 charged to all other customers through higher  
7 transmission and stranded cost recovery rates?

8 A. You're informing me of something, but I do not know  
9 that myself, no.

10 Q. Do you agree the transmission costs and stranded costs  
11 are reconciled?

12 A. I agree that they are reconciled in some cycle, yes.

13 Q. Okay. So, if they're reconciled, doesn't that mean  
14 that all other customers pay for those costs  
15 immediately, without having to wait until the next rate  
16 case?

17 A. Well, Steve, I don't know if it's "immediate". I  
18 simply know that they get reconciled, and there is a  
19 socialization, if you will, of those costs.

20 Q. So, all other customers pick them up?

21 A. That is correct.

22 Q. Okay. If this arrangement were approved, could any  
23 customer enter into the same type of arrangement?

24 A. If the arrangement were approved, and it was fully

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1 compliant with the stipulations in LEEPA, then,  
2 obviously, others would be able to partake.

3 Q. I have an Eversource account, and I take delivery  
4 service from them. Could I enter into an arrangement  
5 with Fiske Hydro for a percentage of their output and  
6 get delivery service at no cost, if this were approved?

7 A. Let me take a look at the law, then I'll answer that  
8 question.

9 MR. RODIER: Mr. Chairman, the answer is  
10 "yes". Just --

11 CHAIRMAN HONIGBERG: Counsel is saying  
12 that the answer is "yes".

13 MR. HALL: Okay.

14 CHAIRMAN HONIGBERG: It seems like you  
15 were interested in looking at the law. The fact that your  
16 lawyer thinks the answer is "yes", you're probably not  
17 going to disagree with him, are you?

18 WITNESS FROMUTH: I'm not. I was just  
19 trying to make sure the law didn't specify that the  
20 customer had to be commercial or industrial.

21 CHAIRMAN HONIGBERG: All right. Mr.  
22 Hall, are you going to take that?

23 MR. HALL: That's fine with me.

24 CHAIRMAN HONIGBERG: All right. Go

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1 ahead.

2 BY MR. HALL:

3 Q. Go a little further. Could everyone in my neighborhood  
4 or in the Town of Bedford do the same thing with  
5 another qualified facility, with another LEEPA?

6 CHAIRMAN HONIGBERG: Mr. Rodier.

7 MR. RODIER: It's a question of law. It  
8 appears, on the face of the law, that this is limited to  
9 three customers, Mr. Chairman.

10 CHAIRMAN HONIGBERG: It does seem to  
11 call for a legal conclusion, Mr. Hall.

12 MR. HALL: All I'm trying to get at, Mr.  
13 Chairman, is the applicability of what's being suggested  
14 in this docket. And, I'm not suggesting that 15 customers  
15 purchase power from one LEEPA. I'm suggesting that,  
16 generically, if this is approved, could any customer enter  
17 into a similar arrangement with another limited electrical  
18 power producer and get free delivered service?

19 CHAIRMAN HONIGBERG: And, I think,  
20 doesn't his answer have to be "if it otherwise complies  
21 with the law, yes"?

22 MR. HALL: I'll accept that.

23 CHAIRMAN HONIGBERG: Mr. Rodier.

24 MR. RODIER: Well, one other thing I

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1 think. I was going to say, it has to be within the  
2 jurisdiction of the -- I don't think you can have a seller  
3 and a buyer in different utility territories. But, other  
4 than that, --

5 CHAIRMAN HONIGBERG: So, assuming it's  
6 within one utility's franchise territory, --

7 MR. RODIER: Yes.

8 CHAIRMAN HONIGBERG: -- and it otherwise  
9 complies with the law, Mr. Rodier believes the answer to  
10 that question is "yes".

11 MR. RODIER: Yes.

12 CHAIRMAN HONIGBERG: So, since we are  
13 talking law here, it probably isn't necessary for you to  
14 get an answer from the witness on that. Would you agree,  
15 Mr. Hall?

16 MR. HALL: I do.

17 CHAIRMAN HONIGBERG: You may proceed.

18 MR. HALL: Thank you.

19 BY MR. HALL:

20 Q. Mr. Fromuth, you're suggesting that the Commission can  
21 authorize or must authorize these facilities to -- they  
22 must approve a contract for the sale of the power, and  
23 that there are certain criteria that Mr. Rodier set  
24 forth earlier today with regard to what they look at,

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1           like whether it's in the public good, whether there's  
2           undue risk to any party. My question is this. Does  
3           Eversource's tariff provide terms and conditions and  
4           prices for delivery service?

5   A.    I believe it does.

6   Q.    Okay. And, I want to shift and talk a little bit about  
7           ratemaking. In your testimony, you talk about the  
8           "marginal cost of providing the service", and you say  
9           that it's "zero". Are you -- are you effectively  
10          advocating that the rates that FEL be charged for the  
11          delivery by Eversource be set at that marginal cost of  
12          providing distribution service, i.e., be set at zero?

13   A.    I'm proposing that FEL take advantage of the language  
14          in the LEEPA statute that calls for there to be no  
15          assessment, if there are no -- in other words, the  
16          LEEPA statute calls for any incurred costs, if they are  
17          incurred, to be charged against the transaction. If  
18          there are no incurred costs, then the cost would be  
19          zero.

20   Q.    Does the statute specify whether those costs are  
21          marginal or embedded?

22   A.    It does not.

23   Q.    Okay. Are Eversource's distribution rates set at the  
24          marginal cost of providing the service, distribution

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1 rates for all customers?

2 A. I do not know.

3 Q. Would you accept subject to check that rates are set to  
4 recover the embedded or historical cost of providing  
5 service?

6 A. Would I accept what?

7 Q. Subject to check, that the Commission sets rates to  
8 recover the embedded or historical cost of service?

9 A. You would be in a position to know. And, if you're  
10 stipulating that that's the case, I wouldn't object to  
11 that.

12 Q. Okay. That's fine.

13 MR. RODIER: Mr. Chairman, I do want to  
14 make the point that the issue of law had been raised here  
15 is to -- this compensation is going to be "costs  
16 incurred", and that's another issue of law put, what's the  
17 meaning of that phrase.

18 CHAIRMAN HONIGBERG: Understood.

19 MR. RODIER: Okay.

20 CHAIRMAN HONIGBERG: Mr. Hall is just  
21 making sure that he understands --

22 MR. RODIER: Right.

23 MR. HALL: That's right.

24 CHAIRMAN HONIGBERG: -- how that works,

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1 and whether it's consistent with traditional ratemaking.

2 MR. HALL: Yes.

3 BY MR. HALL:

4 Q. Do you know of any utility's rates that are set at the  
5 marginal cost of providing service?

6 A. I've poured over many other instances around the  
7 country where I have delved into retail wheeling cases,  
8 and there's a great deal of variety between the  
9 wheeling assessment and the wheeling charge that's  
10 levied and approved by the host state commission and  
11 the actual body of tariff in that state.

12 So, I'm aware that there is a great deal  
13 of variety, in terms of distancing one's self from the  
14 traditional tariff versus the retail wheeling tariff,  
15 as the terminology is known to all of us here.

16 So, whether or not that's a marginal  
17 cost or not, I can't say. But they are certainly  
18 closer to zero than the tariff rate.

19 Q. Okay. That's fair enough. Since Eversource's delivery  
20 charges to all of its customers are set at -- if  
21 Eversource's delivery charges to all of its customers  
22 are set at embedded cost of providing the service, is  
23 FEL, therefore, requesting special treatment, as  
24 compared to all other customers?

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1 A. Well, we are asking for the Commission to rule upon the  
2 applicability of the LEEPA statute to a certain  
3 transaction that we have structured and proposed. So,  
4 we are not asking for anything other than following a  
5 law that has got a lot of dust on it, hasn't been  
6 utilized, and we would like to initialize the  
7 utilization. So, I think that that's how I would  
8 characterize what we are trying to do.

9 Q. Okay. You're asking the Commission to implement the  
10 law, but you're also asking them to do it in a manner  
11 that results in zero cost for delivering service to  
12 FEL, is that correct?

13 A. I'm asking them to observe and to define, help us  
14 define, the way we see it, the lack of incurred costs.  
15 And, if no costs are incurred, then no costs should be  
16 assessed in the delivery.

17 Q. Okay. In your opening statement, you talked about  
18 "capturing the value that's contained in the statute",  
19 I think I've paraphrased that correctly. Value for  
20 whom?

21 A. The participants in the transaction.

22 Q. Namely, FEL and Fiske Hydro?

23 A. Correct.

24 Q. Okay. Do all other customers receive any value from

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1 this transaction?

2 A. Other customers could receive value from this  
3 transaction, if they were to undertake it themselves.

4 Q. Okay. So, that gets into the line of questioning I  
5 asked earlier, about any customer being able to do  
6 exactly what it is that you want to do, if the  
7 Commission approves this transaction. That's how other  
8 customers would get that value?

9 A. Yes, it is. I mean, other customers choose to take  
10 default energy service from Eversource and pay that  
11 rate. And, some customers choose to take just delivery  
12 service from Eversource and pay a rate that is  
13 determined between them and their supplier, which is  
14 usually a lesser rate. So, just as that has not  
15 received total widespread adoption, that is the choice  
16 between delivery -- default service and delivery  
17 service, this will perhaps be slow to start, but others  
18 will take advantage of it.

19 Q. Okay. So, to summarize, you're asking that a contract  
20 between FEL and Fiske Hydro for the purchase of energy  
21 be approved by the Commission. And, you've admitted  
22 that there's no change in load anywhere on Eversource's  
23 system or in the generation output. Is that correct?

24 A. That's a fair summary.

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1 Q. Okay. And, then, as part of this approval, you're also  
2 asking the Commission to require Eversource to deliver  
3 that power at no cost. I think we've already  
4 established that?

5 A. In accordance with the LEEPA statute, yes.

6 Q. Got it. So, nothing changes, except that the bill to  
7 FEL for delivery of the power would go to zero. My  
8 question is, why isn't this a sham transaction?

9 MR. RODIER: Mr. Chairman, that's a term  
10 of law. And, --

11 CHAIRMAN HONIGBERG: It's a little  
12 argumentative, too, wouldn't you say, Mr. Rodier?

13 MR. RODIER: Yes, I would.

14 CHAIRMAN HONIGBERG: Yes. I'd sustain  
15 that objection.

16 MR. HALL: I have nothing further then.

17 CHAIRMAN HONIGBERG: Mr. Taylor, do you  
18 have any questions?

19 MR. TAYLOR: I have no questions.

20 CHAIRMAN HONIGBERG: Mr. Wiesner, do you  
21 have any questions?

22 MR. WIESNER: I do, Mr. Chairman.

23 CHAIRMAN HONIGBERG: Just let's go off  
24 the record for a minute.

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1                   *[Brief off-the-record discussion*  
2                   *ensued.]*

3                   CHAIRMAN HONIGBERG: So, we're back on  
4 the record. So, we're going to break before Mr. Wiesner  
5 begins. And, we'll come back as close to 1:30 as we  
6 reasonably can. Thank you all.

7                   (Lunch recess taken at 12:26 p.m. and  
8 the hearing resumed at 1:36 p.m.)

9                   CHAIRMAN HONIGBERG: Mr. Wiesner.

10                  MR. WIESNER: Thank you, Mr. Chairman.

11                  MR. RODIER: Dave, should I?

12                  CHAIRMAN HONIGBERG: Mr. Rodier.

13                  MR. RODIER: Yes. Mr. Chairman, this is  
14 a tough day for us. Our heart was in the right place.  
15 But we're out of resources here. And, it's pretty obvious  
16 there's a number of critical decision points coming up.  
17 So, we really don't think it's best that we move forward.  
18 I'm not quite sure, you know, how to leave it. But I've  
19 been coming here 39 years. You know, this is very  
20 disappointing to have to do this to the Commission. But  
21 we would -- I guess what I would like to do, Attorney  
22 Geiger has a suggestion. May I defer to Attorney Geiger  
23 as to how things might be handled?

24                  CHAIRMAN HONIGBERG: Attorney Geiger.

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1 MS. GEIGER: Thank you, Mr. Chairman.

2 CHAIRMAN HONIGBERG: Why don't you use  
3 -- Attorney Geiger, why don't you use the microphone. Mr.  
4 Hall, I think, was having a little trouble hearing before.  
5 So, the microphone helps the people in the back.

6 MS. GEIGER: Sure.

7 CHAIRMAN HONIGBERG: And you can be  
8 comfortable.

9 MS. GEIGER: Okay. Thank you. Mr.  
10 Rodier, after the break, had indicated that it would be  
11 his intent to, I believe, withdraw his Petition at this  
12 juncture. And, upon being informed of that, I and my  
13 client felt that -- somewhat shortchanged, because we  
14 believe that a lot of time and energy has gone into the  
15 docket. And, it presents, we think, a very important  
16 question. And, it's, I think, a threshold legal issue, as  
17 to the continued vitality of the LEEPA statute.

18 And, so, rather than abandon the  
19 proceeding at this point, GSHA would prefer instead to  
20 move ahead, maybe suspend the evidentiary hearing, and at  
21 least allow the parties the opportunity to brief the legal  
22 issues that have been raised by the filing, and then  
23 Mr. Labrecque's rebuttal testimony. And, more  
24 specifically, it would be the -- I think the legal issues



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1 are, you know, "whether RSA 362-A has been repealed by  
2 implication?" I think that that's what Mr. Labrecque's  
3 testimony gets at. And, "whether or to what extent any  
4 FERC decisions or federal laws, case law or statutes,  
5 have, you know, preempted LEEPA's provisions regarding  
6 sales by QFs to three end-users?"

7 So, we would ask that, I think we  
8 understand what Mr. Rodier has asked, but we would  
9 respectfully ask that the Commission consider an  
10 alternative, which is to allow the parties to brief the  
11 legal issues, so that we have a decision.

12 And, then, if there are parties in the  
13 future that wish to avail themselves, assuming that the  
14 answer is that LEEPA has not been preempted and has not  
15 been repealed by implication, if there are other QFs that  
16 want to bring forward a more well-defined plan for sales  
17 to up to three customers, then they would have an  
18 opportunity to do that.

19 If the answer is that LEEPA has been  
20 repealed by implication or somehow preempted or superseded  
21 by other law, then we'll know that, too. And, there will  
22 be no more time and resources spent on trying to develop  
23 those types of sales arrangements.

24 CHAIRMAN HONIGBERG: Have others given

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1 thought to how we might proceed along the lines of what  
2 Attorney Geiger has said? Do people need to think about  
3 that for a few minutes before responding?

4 Well, let me say a few things while  
5 you're thinking about that. We have discussed, I think  
6 among ourselves, similar questions to what you have,  
7 Attorney Geiger. I think we would be interested in  
8 knowing, if not -- maybe it's not a total preemption or  
9 repeal, maybe there's parts of it, maybe there's still  
10 some vitality in some, that there's some application that  
11 might be, if it's not been totally. I mean, we're just  
12 trying to, in discussing what are the possible outcomes  
13 here, you know, is there a different looking transaction  
14 that might still be allowed by LEEPA, even though what  
15 people thought LEEPA would do when it was first enacted  
16 might no longer be allowed, given the passage of other  
17 enactments and other sources of law? But it hasn't been  
18 briefed. And, so, we really don't -- we don't have it  
19 queued up in any context.

20 I'm a little leery of proceeding with a  
21 proposed agreement that is, on its face, lacking in so  
22 many concrete terms. And, so, suspending this proceeding  
23 feels like as much of a hypothetical question as if we had  
24 just a new generic docket and asked the question. But

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1 that's untethered from facts, too. I'm not really sure  
2 whether there's an appropriate mechanism.

3 And, just for an example, if we give an  
4 answer here that someone doesn't like, is it concrete  
5 enough to be taken to the Supreme Court? Because that's  
6 the next step for our legal opinions. You know, if  
7 somebody doesn't agree with our legal judgment, they have  
8 to go to the Supreme Court. And, the Supreme Court is  
9 loath to weigh in if there's not an actual dispute, I  
10 mean, they more so than the federal court. But, still, if  
11 they don't have a true controversy in context, I think  
12 they'd be leery in weighing in themselves.

13 Do others have thoughts? Do you want to  
14 think about it for a while and have a discussion, and then  
15 see if you can reach some accord?

16 Mr. Fossum, you look like you want to  
17 say something.

18 MR. FOSSUM: Thank you. Yes. I mean,  
19 initially, we didn't know until we returned to the room  
20 that this is what the proposal is. But, if the Petitioner  
21 seeks to withdraw, then I don't see any reason to stop  
22 that necessarily.

23 But, as to the alternative relief that I  
24 guess has just been requested or at least floated as a

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1 possibility, the Commission has already gone there, Docket  
2 14-346, and near the end of last year was a request for a  
3 declaratory judgment by the same petitioner, on the same  
4 statute, seeking exactly that relief. A declaration, I  
5 believe it was, that it was "good law" or that it had  
6 "continuing vitality", I don't know the term that's --  
7 necessarily that were used. And, the Commission rejected  
8 that proposal as, to use your words, as being "untethered  
9 from facts".

10 So, we're here today with a more fleshed  
11 out proposal, with the idea that it would be bringing to  
12 the Commission the facts that it needed to actually make a  
13 decision.

14 So, I think that issue has already  
15 been -- sort of has been raised and decided already. I  
16 don't think there's any reason to go back there and reopen  
17 that as a possibility today.

18 CHAIRMAN HONIGBERG: What about a  
19 rulemaking? What about someone filing a proposed set of  
20 rules on how this would work? Because that would queue up  
21 responses that would say "you can't do this, because the  
22 statute doesn't allow it." And, I don't -- I mean, again,  
23 if someone disagrees with us, I'm not 100 percent sure how  
24 that then continues, but it's another way to deal with

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1       hypotheticals. Because you are, of course, right,  
2       Mr. Fossum, your memory is exactly correct, with respect  
3       to the Petition for Declaratory Judgment that was filed,  
4       the Declaratory Ruling that was filed.

5                       MR. FOSSUM: Well, and as to the  
6       rulemaking, I suppose, if anybody wants to request one,  
7       they are free to do so at any time. We can't stop that  
8       from happening. But the statute that we're working under  
9       here is one that speaks to the Public Utilities Commission  
10      "reviewing and approving specific contracts for specific  
11      purposes, and reviewing those contracts to determine  
12      whether they entail cost or risk to the utility, whether  
13      they're consistent with the public good".

14                      I'm not certain how you get to decide  
15      those issues through rules necessarily. Each contract  
16      might look different. Each facility that might seek the  
17      contract might have different characteristics that might  
18      look different.

19                      I suppose it's possible that it could be  
20      attempted, and, yes, it would likely generate a lot of  
21      that same discussion. But, in the end, you're working  
22      with a statute that seems to countenance specifics,  
23      specific contracts with their specific terms. I don't  
24      know that that's really ripe or appropriate for a

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1 rulemaking. It's just my opinion, as I said.

2 CHAIRMAN HONIGBERG: I appreciate that.  
3 Everyone is having to do this on the fly.

4 Mr. Wiesner, do you have any thoughts on  
5 this? You and I have had a lot of fun with rules. Maybe  
6 there's some way, some way through the rules morass that  
7 could help us here. Although, I appreciate what  
8 Mr. Fossum said, and I don't disagree.

9 MR. WIESNER: And, as I understand, the  
10 proposal would be for someone to file a petition for a  
11 rulemaking with some proposed rules that would address  
12 some of these issues. Perhaps, for example, whether a  
13 wheeling charge should be based on marginal costs --

14 MR. RODIER: Right.

15 MR. WIESNER: -- or embedded costs, for  
16 example. But the Commission will be free to go forward  
17 with that rulemaking or not. I do share a concern  
18 expressed by Attorney Fossum that a declaratory ruling in  
19 the absence of any specific facts, which was the basis for  
20 the dismissal of the original Freedom request last year,  
21 does put the Commission in the place of issuing an  
22 advisory opinion about what the law means, and that raises  
23 some troubling issues, I think.

24 It might be that, if people want a

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1 definitive read as to whether this law is still in effect,  
2 that they ought to go to Superior Court and file a  
3 petition for declaratory judgment there. I know that's  
4 extra work, and we've all spent a lot of time preparing  
5 for this hearing. But this hearing was with respect to a  
6 specific proposal, which is, you know, not nearly as  
7 well-defined as we even thought it was, and there were  
8 issues raised by the proposal as we understood it.

9 CHAIRMAN HONIGBERG: Having just read  
10 some decisions about the relationship between Superior  
11 Court and the Commission, with regards to primary  
12 jurisdiction, exclusive jurisdiction, I think the Superior  
13 Courts would take a look at the statute that we're working  
14 with here and would see all of the responsibilities of the  
15 Commission and might well say "Eh, it's really not for  
16 us."

17 MR. WIESNER: And, in that case, we're  
18 left in a difficult position. Because a Petition for  
19 Declaratory Ruling here, and this was the decision of the  
20 Commission last year, I think it was last year, requires  
21 that there be a specific set of interests implicated, a  
22 specific set of facts that can be addressed, and that it  
23 not be speculative or advisory. And, unfortunately, it  
24 seems that that would be the basis for going forward here

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1 to brief the legal issues.

2 And, since we're all thinking on the  
3 fly, I mean, would this be an appropriate matter for some  
4 sort of an investigation docket, where the parties could  
5 get together perhaps and decide what they think it means,  
6 and propose something to the Commission?

7 CHAIRMAN HONIGBERG: Well, what would  
8 that proposal be, though? I mean, it would --

9 MR. WIESNER: That's a good question.

10 MR. RODIER: Mr. Chairman, may I just  
11 add one thought?

12 CHAIRMAN HONIGBERG: Mr. Rodier, yes.

13 MR. RODIER: Yes. What came to our  
14 attention today, what was really a back-breaker for us is  
15 the FERC jurisdiction issue. I can see that coming. And,  
16 you know, I really think that it's got to be -- you're  
17 heading in the right place. We need to know whether this  
18 has even -- has ever been repealed, sort out the FERC  
19 jurisdictional issue. What the statute, it says "costs  
20 incurred", and we say "oh, we know the plain meaning to  
21 that." But, so, that's really the problem we have right  
22 now. It's just a question of time and resources to do  
23 this for a relatively, you know, a small company, we would  
24 like to see all this time and effort not be wasted, but we



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1 just can't, you know, go forward. And, I apologize that  
2 we've hit that juncture.

3 CHAIRMAN HONIGBERG: What about our  
4 friends in the other branch that deals with policy and  
5 gets to write these laws? I mean, someone could certainly  
6 introduce a bill to clarify what, if anything, should be  
7 done with this statute. When you put things in the  
8 Legislature, you're never sure what's going to come out  
9 the other end, but -- and I don't even -- and the filing  
10 periods may well have closed by now. I know they have --  
11 I guess after the -- yes, I mean, I think they have closed  
12 for the next session. Maybe the Senate still has a filing  
13 period that's open, but you'd probably need a rule  
14 suspension. I mean, maybe somebody has got a bill that  
15 they would be willing to convert to turn it into a  
16 discussion of this, but it's a process that may have to go  
17 on beyond us.

18 I guess what I'm going to say is, we  
19 don't have to do anything this moment, I think.

20 MR. RODIER: Right.

21 CHAIRMAN HONIGBERG: We can certainly --  
22 we can certainly suspend this hearing, with the  
23 understanding that there's going to be a withdrawal of the  
24 Petition, or the parties will agree on some other way of

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1 proceeding in this docket or some other docket. But I  
2 think what I'm getting from you, Mr. Rodier, is that  
3 withdrawal is going to happen, unless there's some other  
4 way of going forward, along the lines of what Attorney  
5 Geiger suggested, or maybe something else that folks can  
6 come up with.

7 I see some concerned faces out there.  
8 So, maybe I've -- maybe I've misstated that.

9 MR. RODIER: No, that's fine. That's  
10 our position, because we just can't spend more time and  
11 resources without, really, I mean, that's our only  
12 constraint, to be honest with you.

13 CHAIRMAN HONIGBERG: Mr. Taylor, and  
14 then back to Ms. Geiger.

15 MR. TAYLOR: My understanding, from what  
16 I heard from Mr. Rodier, was actually that the Petition  
17 was being withdrawn. That he is withdrawing the Petition,  
18 and that it's not a speculative future event. And, so, if  
19 I'm wrong, he can correct me on that. But my  
20 understanding is he was presenting to the Commission that  
21 he was actually withdrawing his Petition. And, if that  
22 were the case, then I would suggest that there's nothing  
23 before the Commission to consider in this docket any  
24 longer, and that the docket probably ought to be closed.

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1 MR. RODIER: The explanation for that is  
2 Ms. Geiger approached me with what I thought was a great  
3 idea.

4 CHAIRMAN HONIGBERG: Yes. I think, I  
5 hear what you're saying, Mr. Taylor, but I think they have  
6 moved -- he may have moved away from that slightly. That  
7 doesn't mean he's got -- he's got a good claim that should  
8 proceed, but I think he may have moved slightly off of  
9 that position.

10 Yes, Ms. Geiger.

11 MS. GEIGER: Thank you, Mr. Chairman.  
12 GSHA also has finite resources, and really hates to see  
13 all the effort that's been developed here abandoned. And,  
14 so, we would respectfully ask that, obviously, our first  
15 choice would be to have an opportunity to brief the legal  
16 question, because we think that it's necessary. But, to  
17 the extent that we don't have sufficient facts to do that,  
18 we would prefer instead to see the proceeding suspended or  
19 held in abeyance, such that, if another party were to come  
20 in and be able to supplement the record, to move forward  
21 perhaps in a different direction, then the resources that  
22 have been expended thus far would not be for nothing.

23 And, therefore, we think that the better  
24 course of action would be to either stay the proceedings

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1 or just hold them in abeyance.

2 CHAIRMAN HONIGBERG: I think I know, Mr.  
3 Hall, you're going to support the notion that it should be  
4 withdrawn, and that there's nothing further to consider,  
5 right?

6 MR. HALL: Correct. Because I think any  
7 party is free to file a petition with the Commission at  
8 any time they want. I don't see any benefit to holding  
9 the proceeding in abeyance or suspending it.

10 CHAIRMAN HONIGBERG: And, I've heard  
11 from you, Mr. Taylor. And, I expect, Mr. Fossum, you have  
12 the same view, correct?

13 MR. FOSSUM: Correct. Yes. At this  
14 point, yes. If the Petition is to be withdrawn, then I  
15 think that that should be the end of it.

16 CHAIRMAN HONIGBERG: Mr. Wiesner, you  
17 have anything, any thoughts on this? We'll probably go in  
18 the next room and think about this for a few minutes.

19 MR. WIESNER: Just one alternative  
20 approach, Mr. Chairman, would be, and this is more  
21 process, but it gives parties more time to work this  
22 through and decide which direction they might want to go,  
23 would just offer it up.

24 Mr. Rodier could file a motion

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1       indicating his intent to suspend -- to, excuse me,  
2       withdraw the Petition and have this docket closed. And,  
3       then, other parties could weigh in on whether that's the  
4       appropriate course of action, or whether this docket  
5       should continue, so that it could serve as a vehicle for a  
6       determination of relevant legal issues, which is what I  
7       understand Attorney Geiger is proposing.

8                       CHAIRMAN HONIGBERG: Does anyone  
9       anticipate having a different view than the one they have  
10      just articulated?

11                      *[No verbal response]*

12                      CHAIRMAN HONIGBERG: I didn't think so.  
13                      All right. Anyone else have anything  
14      else they want to say? We're going to go probably across  
15      the hall and talk this through for a few minutes.

16                      *[No verbal response]*

17                      CHAIRMAN HONIGBERG: All right. We'll  
18      break and be back in a few minutes.

19                      (Recess taken at 1:55 p.m. and the  
20      hearing resumed at 2:08 p.m.)

21                      CHAIRMAN HONIGBERG: Thank you all for  
22      your patience.

23                      We don't believe that it makes sense to  
24      proceed with this docket further. There seems to be a

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1 recognition all around that this contract should be  
2 withdrawn. Without it, there's really no -- there's no --  
3 there's nothing to consider under the statute.

4 Attorney Geiger, we understand your  
5 point. I think that, if you or a member of your  
6 association has or develops an agreement that has more of  
7 the concrete terms, whatever good work was done in this  
8 docket you should be able to find and use, without having  
9 to reinvent that. It may not be -- it may not translate  
10 well, because this one was specific to a particular  
11 circumstance. Whatever else you develop might be too  
12 different, but I think that's a judgment you're going to  
13 have to make.

14 So, our intention is to terminate this  
15 docket, on the grounds that the contract is not sufficient  
16 to go forward. And, I believe there is agreement around  
17 the room largely on that point.

18 Have I misstated anything from anybody's  
19 standpoint?

20 *[No verbal response]*

21 CHAIRMAN HONIGBERG: All right. Seeing  
22 none, thank you all. There are some interesting issues  
23 lurking here, but I'm afraid they're going to have to wait  
24 for another day to be resolved.

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[WITNESS: Fromuth]

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MR. RODIER: Thank you.

CHAIRMAN HONIGBERG: We are adjourned.

***(Hearing adjourned at 2:09 p.m.)***