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October 6, 2017

Debra A. Howland
Executive Director and Secretary State
of New Hampshire
Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

RE: Request for Rulemaking with Respect to Purchases of Electric Energy and Capacity Produced from Qualified Facilities

Dear Ms. Howland:

INTRODUCTION

Please find enclosed for filing on behalf of Freedom Logistics, LLC, a New Hampshire limited liability company operating under the trade name Freedom Energy Logistics ("FEL") an original and (7) copies of FEL's Request for Rulemaking Pursuant to RSA 541-A:4 and Rule Puc 205.03 with respect to utility purchases of electric energy and capacity produced from qualifying facilities ("QFs"). FEL is a member of Granite State Hydro Association and has been actively involved in developing Group Net Metering agreements.

Pursuant to Puc 205.03(e), FEL herewith submits as an attachment the approximate text of a draft proposed rule establishing the requirements for the jurisdictional utilities in New Hampshire to purchase the output generated from in-state Qualified Facilities (QFs).

BACKGROUND

Presently, PSNH/Eversource has been providing default energy service to customers by utilizing its generation assets and, if necessary, through supplemental power purchases.

On August 21, 2015, PSNH/Eversource filed a Request for Rulemaking with the Commission for the purpose of establishing the requirements for jurisdictional utilities in New

Hampshire to purchase the output generated from QFs. The rule proposed by PSNH/Eversource sought to establish a purchase price for energy products based largely on the ISO-NE Real Time nodal LMP clearing price at the node where the generator is located. The Commission denied the PSNH/Eversource Request, stating that "[w]e recognize that the determination of purchase obligations and avoided cost rates are important issues that may need to be revisited." *Order No. 25,814*, Docket No, DRM 15-340, (September 18, 2015) at p. 5.

Subsequently, on June 29, 2017 in Docket No**.** DE 17-113, PSNH/Eversource petitioned the Commission for approval of its proposal for providing default Energy Service ("ES") to its customers following the divestiture of its generating facilities consistent with the 2015 PSNH Restructuring and Rate Stabilization Agreement.

Of further note, in its recently released Order in the "Net Metering Docket," the Commission ordered that "[l]arge customer-generators would continue to receive export credits based only on the utility default service energy charge." *Order No. 26,029* (June 23, 2017) at p. 22. Therefore, under Net Metering, a large customer-generator will be able to sell its output to the utilities and receive payments based equal to the utility default service energy charge. In stark contrast, the same large customer-generator would currently otherwise only receive payments for its energy products based primarily on the ISO-NE Real Time nodal LMP clearing price at the node where the generator is located.

SUMMARY OF PROPOSED RULE

The state's electric utilities are obligated to purchase the electric energy and capacity produced from QFs that are eligible small power producers under PURPA. The rates that utilities are required to pay under the PURPA mandatory purchase obligation must be based on that utility's avoided costs.

In this regard, the U.S. District Court of Massachusetts issued a ruling on July 1, 2017 in the matter of *Allco Renewable Energy Limited v. Massachusetts Electric Company d/b/a National Grid* **(**No. 15-13515-PBS).

The District Court ruled as follows:

> [FERC's] regulations require that a utility purchase any energy and capacity made available by a QF. Under section 292.304(d) of the Commission's regulations, a QF also has the unconditional right to choose whether to sell its power "as

> available**" or pursuant to a legally enforceable obligation at a forecasted avoided cost rate determined, at the QF's option,** either at the time of delivery or at the time that the obligation is incurred.

Emphasis added.

Needless to say, the Court's ruling appears to be adverse to the Commission's recent ruling in Docket No. DE 14-238 as well as the currently relevant PSNH d/b/a Eversource tariff provision. *(Section 33. Rates for Purchases from Qualifying Facilities).*

CONCLUSION

This Request for Rulemaking seeks to authorize a QF to sell its output to the utilities and receive payments equal to pursuant to a legally enforceable obligation at a long run forecasted avoided cost rate.

Respectfully submitted,
/s/ James T. Rodier

Dated: October 6 , 2017

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