

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE DEPARTMENT OF ENERGY

DOE Docket No. 2024-005

Kearsarge Solar LLC, ReWild Renewables, LLC, and Lodestar Energy LLC

v.

Public Service Company of New Hampshire and Eversource Energy Service Company

**PLAINTIFFS' REPLY TO OBJECTION TO
MOTION FOR LEAVE TO AMEND COMPLAINT**

Kearsarge Solar LLC, through its attorneys, BCM Environmental & Land Law, PLLC, ReWild Renewables, LLC, *pro se*, and Lodestar Energy LLC, *pro se*, (together, the "Plaintiffs"), respectfully reply to the Defendants' Objection to the Plaintiffs' Motion for Leave to Amend ("Objection") as follows:

1. The Objection is founded on a fundamental mischaracterization of the law. Administrative Rules in and of themselves do not establish the law; instead, enabling statutes set forth in the Revised Statutes Annotated and enacted by the Legislature set forth codified law. Administrative Rules, crafted by those who may have deeper subject matter expertise and then approved by the Joint Legislative Committee on Administrative Rules, do the work of implementing those laws.

2. Thus, no matter how many times the Objection repeats that the Plaintiffs' assertions fail if the Plaintiffs withdraw the portion of their claims that Defendants are violating Puc 904 through 908, Defendants willfully ignore the inescapable fact that Plaintiffs have always asserted claims in this docket that Defendants are violating the New Hampshire statutes that enable the entirety of Puc 900s at issue. Both the original and the amended complaint assert violations of 362-A, and RSA 362-F, and assert several contractual claims.

3. The Objection grossly mischaracterized the Plaintiffs' position—the Plaintiffs have not effectively conceded either that they brought a meritless and facially deficient complaint or brought a complaint with no valid allegation. *See* Objection, at p. 4. As explained above, the Plaintiffs reply to correct as strenuously as possible those inappropriate misrepresentations.

4. The Objection also exhibits extreme misunderstanding of the status of this complaint proceeding. Merely because Defendants have asserted defenses does not make them so. Defendants are not the adjudicators or decision-makers in this proceeding; that role lies in the first instance with the Department of Energy.

5. Accordingly, when Plaintiffs assert that Defendants' delays are unlawful and Defendants defend that they are not, and the Department requests further information, no determination has been made such that Defendants are justified in seeking to prevent a lawful amendment because they "already addressed the lack of merit." *See* Objection, at p. 3.

6. Similarly, merely because the Defendants have asserted, twice now, that Plaintiffs' contractual claims cannot be part of this matter does not make it so; no determination has been made on this issue.

7. Lastly, Defendants completely ignore several other important points germane to Plaintiffs' amendment request.

8. The parties to this matter had been vigorously exploring out-of-agency settlement since even before the filing of the original complaint, so the timing would have been premature to request amendment while those discussions continued.

9. The Defendants' course of conduct already supports and addresses Plaintiffs' amendment. For example, throughout Defendants' April 22, 2024 response, Defendants refer

eleven times to the “first-come, first-served” standard found only in Puc 903.02, cite it in a footnote, and extensively assert their compliance with it.

10. As just one of the eleven instances of Defendants already relying on the rules Plaintiffs now seek to formally incorporate into the amended complaint, Defendants claim in their response, “the Company obligations under Puc 903.01(b) to comply with Puc 900 in a non-discriminatory manner and not unreasonably withhold its permission to interconnect a customer-generator’s facility, and Puc 903.02(b) to make net metering eligibility available on a first-come, first-served basis.” *See* Response, at p. 2.

11. Plaintiffs’ amendment simply updates the complaint to formally assert violation of the rules, in addition to already asserting violations of the statutes.

12. Defendants attempt to place blame on Plaintiffs for forcing Eversource to “vet” the Plaintiffs’ 28 projects against the law including against Defendants’ own Guidelines, but that attempted blame is misplaced. Defendants should already know whether Defendants are complying with or violating laws and their own Guidelines. Any so-called “extra work” Defendants have had to do to ascertain compliance results only from the problem Plaintiffs seek to solve through this proceeding—that Defendants are woefully, unlawfully, behind in processing applications.

13. Nothing in the applicable rules is inconsistent with New Hampshire’s well-settled common law of liberally permitting amendment. The Plaintiffs’ request satisfies the amendment standards. Plaintiffs need not prove new materials facts, as Defendants articulate.

WHEREFORE, the Plaintiffs respectfully request that the Department:

- A. Allow the Plaintiffs to Amend their Complaint; and
- B. Grant such and further relief as may be just.

Respectfully submitted,

Kearsarge Solar LLC

By its Attorneys,

BCM Environmental & Land Law, PLLC

Dated: May 23, 2024

/s/ Amy Manzelli, Esq.

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ReWild Renewables, LLC, *pro se*

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Lodestar Energy LLC, *pro se*

Dated: May 23, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on this date I had a copy of the foregoing forwarded electronically to all other parties on the service list in the matter.

Dated: May 23, 2024

/s/ Amy Manzelli, Esq.

Amy Manzelli, Esq.