

STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Docket No. DE 11-250

Public Service Company of New Hampshire
Investigation of Merrimack Station Scrubber Project and Cost Recovery

MOTION OF PSNH
TO RESCIND PARTY INTERVENOR STATUS OF
THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.

February 18, 2014

Pursuant to RSA 541-A:32 and Rule Puc 203.07, Public Service Company of New Hampshire (“PSNH” or the “Company”) respectfully moves the New Hampshire Public Utilities Commission (“Commission”) to rescind the party intervenor status of the New England Power Generators Association, Inc. (“NEPGA”). NEPGA has failed to either object or respond to PSNH’s data requests submitted to it pursuant to Rule Puc 203.09 in accordance with the procedural schedule for this proceeding. NEPGA’s failure to either object or respond to data requests has breached one of the requirements upon which its party intervenor status was statutorily conditioned; i.e., it would not impair the orderly and prompt conduct of the proceedings. RSA 541-A:32, II. In the alternative, should the Commission determine not to rescind NEPGA’s party intervenor status, PSNH moves to compel responses to the data requests submitted to NEPGA.

In support of this Motion, PSNH states as follows:

1. By a “Petition to Intervene” (“Petition”) dated December 8, 2011, NEPGA requested party intervenor status in this proceeding under RSA 541-A:32 and the Commission’s rules at Rule Puc 203.17. NEPGA claimed that it “meets both mandatory and discretionary intervention standards” of RSA 541-A:32, I and II. Petition at ¶4.

2. In support of its request for party intervenor status, NEPGA stated:

NEPGA is the largest trade association representing competitive electric generating companies in New England whose mission is to enhance economic development and employment through sound energy and environmental determinations. NEPGA's member companies produce approximately 27,000 megawatts of generating capacity in the region, with more than 2,600 megawatts represented by New Hampshire member companies. NEPGA's members sell their energy and capacity into the New England wholesale power markets administered by ISO-New England - the same markets from which PSNH purchases power to supplement its own generation resources, including Merrimack Station. NEPGA members also have experience in installation and financing of pollution control equipment on electrical generation facilities.

Id.

3. In its Petition, NEPGA pledged that “Granting NEPGA's petition for intervention would not impair the interests of justice and would not impair the orderly and prompt conduct of the proceedings.” *Id.* at ¶6.

4. NEPGA also highlighted that “NEPGA is also a potential source of information on many of the key issues to be considered by the Commission in this proceeding, including the impact of environmental regulations and the design, installation and financing of pollution control equipment.” *Id.* at 76. Similarly, during the prehearing conference held on December 13, 2011, NEPGA stated, “NEPGA has a lot to offer in this proceeding, in terms of experience and

knowledge of many of the same issues that the PUC will be reviewing.” Transcript, 12/13/11 at

30. NEPGA also noted,

it's important to keep in mind that, you know, NEPGA members as generators do have to meet the same types of environmental requirements that PSNH brings at issue here, and that is, you know, reducing mercury. And, to the extent that other generators in the region have installed similar equipment or have addressed those requirements, you know, it's important for that -- that to be brought to bear in this proceeding.

Id. at 51. NEPGA continued,

RSA 541-A:32, II, the discretionary intervention, we did also address that in our Motion to Intervene. And, as the Commission knows, if it is in the interest of justice, and there would be no disruption of the proceedings, intervention can be granted. And, you know, we have set forth reasons why it would be in the interest of justice, and that goes to the offer of, you know, information that NEPGA members have on installation of similar equipment, on the costs, on the engineering, on some of the issues that Attorney Knowlton referenced, because the PUC will be reviewing the engineering and construction, it will be reviewing prudence. And, although the NEPGA members are not recovering costs from ratepayers when they install pollution control equipment, they're recovering it from their stockholders.

Id. at 52.

5. At the prehearing conference, the Conservation Law Foundation, Inc., supported NEPGA's Petition to Intervene:

With respect to NEPGA, as the Commission has heard, NEPGA is made up of merchant generators and suppliers. Many of those generators, and counsel for CLF has direct experience having worked for one in the past, are often faced with the exact same circumstance that Public Service Company of New Hampshire was faced with in filing this petition. That is, the need to reduce emissions through the installation of a emissions control technology that entail large capital expenditures. This is the largest, as far as CLF is aware, this is the largest capital project for which any regulated utility in the state has ever sought a cost recovery. And, to have that expertise available to the Commission, as well as to the parties, that is the expertise involved with that decision, as well as how these controls are engineered, installed, and operated by other generators, we would also suggest would be informative and assist the Commission in making the determinations that it must make.

Id. at 55.

6. By written Objection dated December 13, 2011, PSNH objected to NEPGA's Petition on the basis that it did not meet the standards of RSA 541-A:32 to be granted intervenor status. In its Objection, PSNH noted, "The Petitioners' requests for intervention should be denied, as they fail to state facts demonstrating how their rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Code Admin. Rule Puc 203.17 and RSA 541-A:32, I(b)." PSNH Objection at ¶12. PSNH also stated, "Although the Petitioners may have an interest in this proceeding, they have not met the standards of RSA 541-A:32 to warrant the grant of intervenor status '[i]t should be recognized that merely being interested in such a proceeding is not the same as having a legal interest of some nature that may be affected by the proceeding.' *Re North Atlantic Energy Corporation*, 87 NHPUC 455, 456 (2002). 'Merely expressing a concern about a relevant issue, no matter how well-intentioned, does not confer party status.' *Id.* As a result, the Petitioners' requests for intervention should be denied."

7. PSNH renewed its objection to NEPGA's Petition to Intervene during the prehearing conference of December 13, 2013. Transcript, 12/13/11 at 38-41.

8. By Secretarial Letter dated December 23, 2011, the Commission ruled on various petitions to intervene in this proceeding, including NEPGA's:

The Commission has determined that although NEPGA, TransCanada, Sierra Club and CLF have not demonstrated affected rights, duties, or privileges that mandate their intervention, given the particular circumstances of this docket their intervention requests will be granted pursuant to RSA 541:32, II.

See also Order No. 25,346 dated April 10, 2012 at pp. 2-3.

9. On January 16, 2014, PSNH timely submitted discovery questions to the parties in this proceeding pursuant to Rule Puc 203.09, “Discovery.” Rule Puc 203.09(a) provides, “The petitioner, the staff of the commission, the office of consumer advocate and any person granted intervenor status ***shall have the right to conduct discovery in an adjudicative proceeding*** pursuant to this rule.” (Emphasis added). Rule Puc 203.09(b) continues, “Unless inconsistent with an applicable procedural order, any person covered by this rule ***shall have the right to serve upon any party, data requests***, which may consist of a written interrogatory or request for production of documents.” (Emphasis added). *See also*, Order No. 25,398 issued in this docket on August 7, 2012, at pp. 2-3:

In the context of civil litigation, New Hampshire law favors liberal discovery, *see, e.g., Yancey v. Yancey*, 119 NH 197, 198 (1979), and discovery is regarded as “an important procedure ‘for probing in advance of trial the adversary’s claims and his possession or knowledge of information pertaining to the controversy between the parties.’” *Johnston v. Lynch*, 133 NH 79, 94 (1990) (citing *Hartford Accident etc., Co. v. Cutter*, 108 NH 112, 113 (1967)).

10. PSNH’s January 16, 2014, data requests included questions submitted to NEPGA. Copies of the cover letter forwarding those questions and the actual questions are appended hereto as Attachments A and B, respectively. PSNH’s questions to NEPGA relate directly to the matters that formed the basis for its Petition, discussed above, including:

- Its members’ 27,000 megawatts of generating capacity in the region
- Its members experience in installation and financing of pollution control equipment on electrical generation facilities
- Its members’ same types of environmental requirements that PSNH brings at issue here, that is, reducing mercury
- The extent that other generators in the region have installed similar equipment or have addressed those requirements

- Information that NEPGA members have on installation of similar equipment, on the costs, on the engineering, on some of the issues that Attorney Knowlton referenced, because the PUC will be reviewing the engineering and construction, it will be reviewing prudence.
- How these controls are engineered, installed, and operated by other generators

11. Pursuant to the Secretarial Letter issued on January 31, 2013, the Commission established February 2, 2014 as the deadline for “Objections to data requests, in compliance with Puc 203.09(g)(2),” and February 14, 2014 as the deadline for “Responses to data requests to which there are no objections.”

12. To date, NEPGA has not filed any objections to PSNH’s data requests. Under the Commission’s rules, “Failure to object to a data request or requests for documents . . . shall be deemed a waiver of the right to object.” Rule Puc 203.09(h).

13. Despite the lack of objections to PSNH’s data requests, to date NEPGA has not provided any responses to those data requests.

14. Per the Secretarial Letter of December 23, 2011, the Commission found that “NEPGA, TransCanada, Sierra Club and CLF have not demonstrated affected rights, duties, or privileges that mandate their intervention.” Nevertheless, by that letter the Commission granted those entities party intervenor status under the *discretionary* grant of intervention provision of RSA 541-A:32, II. RSA 541-A:32, II provides, “The presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the

interests of justice *and would not impair the orderly and prompt conduct of the proceedings.*”

(Emphasis added).

15. NEPGA’s failure to object to or respond to PSNH’s discovery questions in accordance with the Commission’s rules and the procedural schedule in place for this docket has impaired the orderly and prompt conduct of the proceedings. As a result, NEPGA has breached one of the requirements upon which its party intervenor status was statutorily conditioned; i.e., it *would not impair the orderly and prompt conduct of the proceedings.*

16. RSA 541-A:32, V provides authority for the Commission to modify its grant of intervention: “The presiding officer may modify the order at any time, stating the reasons for the modification.” Such authority to “modify” is unlimited, and thus may include rescission of the original grant of intervention.

17. In the alternative, should the Commission determine not to rescind NEPGA’s party intervenor status, PSNH moves to compel responses to the data requests submitted to NEPGA. Pursuant to Rule Puc 203.09(i)(4), PSNH certifies that it made a good faith effort to resolve this matter informlly.

WHEREFORE, for the reasons set forth herein, PSNH respectfully requests that the Commission:

- A. Rescind the party intervenor status of the New England Power Generators Association, Inc.;or,

- B. In the alternative, should the Commission determine not to rescind NEPGA's party intervenor status, order NEPGA to provide full and complete responses to the data requests; and,
- C. Grant such other relief as the Commission deems appropriate.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Dated: February 18, 2014

By: _____



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CERTIFICATE OF SERVICE

I hereby certify that February 18, 2014, I served an electronic copy of this filing with each person identified on the Commission's service list for this docket pursuant to Rule Puc 203.02(a) and Rule Puc 203.11.

A handwritten signature in black ink, appearing to read "Robert A. Bersak", written in a cursive style.

Robert A. Bersak