

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DRM 14-234

NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.

Request for Rulemaking

**Order Establishing a Rulemaking Proceeding Concerning
Public Utilities and their Affiliates**

ORDER NO. 25,721

October 13, 2014

I. RULEMAKING REQUEST

On September 15, 2014, the New England Power Generators Association, Inc. (NEPGA), filed a request for rulemaking concerning N.H. Code Admin. R. Puc 2100, the Commission's rules relating to affiliate transactions. NEPGA made the request pursuant to RSA 541-A:4 and Puc 205.03. In accordance with that rule, NEPGA attached proposed revisions to Puc 2100. Information concerning NEPGA's request and its proposed revisions, as well as comments on the request, may be found at the following link:

<http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-234.html>.

NEPGA stated that its rulemaking request was triggered by the relationship between two affiliated companies, Northern Pass Transmission, LLC (NPT), the developer of a proposed competitive transmission project, and Public Service Company of New Hampshire (PSNH), a rate regulated public utility. NEPGA further claimed that the Commission has failed to mandate appropriate separations between NPT and PSNH and that, as a result, the relationship between NPT and PSNH has caused harm to New Hampshire electricity consumers.

NEPGA described in some detail the alleged relationships between and among NPT, PSNH, and Northeast Utilities (the ultimate parent company of both NPT and PSNH), as well as the arrangements between NPT and HQ Hydro, the party entering into a transmission services agreement with NPT concerning the proposed Northern Pass Transmission Project. NEPGA's overarching complaints were that PSNH ratepayers have been funding development costs for NPT and that the Report by Commission Staff dated November 5, 2013, which was issued in response to questions about PSNH's activities, was not adequate.

NEPGA's specific claims were that PSNH personnel were performing project development services for NPT at cost, and that such services were an impermissible benefit to NPT. NEPGA argued that NPT should be classified as a "competitive energy affiliate" under Puc 2102.04 and the Puc 2100 rules generally. NEPGA asserted that NPT's potential use of PSNH's rights-of-way could represent a substantial benefit to NPT. NEPGA also complained that PSNH had failed to file the Site Access and Entry Agreement entered into in 2010 between NPT and PSNH as required by RSA 366:3.

NEPGA said its purpose in proposing changes to Puc 2100 was to "put the Northern Pass project on an equal footing with other entrants and existing competitive participants, both transmission and generation, in New England's power markets." Finally, NEPGA attached a draft showing its proposed amendments to the 2100 rules.

II. COMMENTS

PSNH filed comments on September 30, 2014, asking the Commission to deny NEPGA's request for rulemaking. PSNH argued that the Puc 2100 rules were adopted in 2011 and that the interests NEPGA represents, competitive power generators operating in the wholesale markets, should be addressed with ISO-New England (ISO-NE) and the Federal Energy Regulatory

Commission (FERC). Further, PSNH alleged that much of NEPGA's request involved speculation concerning costs and arrangements between NPT and PSNH, that Commission Staff had investigated the relationship, and that Staff had found no violation of applicable standards. Finally, PSNH suggested that existing statutory requirements would allow the Commission to review any proposed power purchase agreements or use of right-of-ways between NPT and PSNH.

Appalachian Mountain Club, Conservation Law Foundation, and Society for the Protection of New Hampshire Forests filed combined comments on September 23, 2014, in support of NEPGA's request. Those organizations agreed with NEPGA's contention that additional regulation was necessary to clarify PSNH's responsibilities and obligations before the Northern Pass transmission proposal moved through the various state and federal permitting processes.

The Office of Consumer Advocate (OCA) filed a comment on October 1, 2014, supporting NEPGA's request for rulemaking, although OCA did not support the specific rule changes proposed in NEPGA's request.

III. COMMISSION ANALYSIS

We have reviewed NEPGA's request for rulemaking and find that the request addresses the items required by Puc 205.03 and is therefore not deficient. *See* Puc 205.03(g). Turning to the substance of NEPGA's request, though styled as a request for rulemaking, it is essentially a complaint against PSNH, containing numerous factual allegations more appropriate to an adjudication than to a rulemaking. We generally initiate rulemaking proceedings to address issues of general applicability and not to address problems or issues associated with a specific party or circumstance. We will nonetheless grant the request that we begin a rulemaking

proceeding to consider whether Puc 2100 should be modified in light of the continued evolution of energy markets in New Hampshire and New England, as well as our evolving role in public utility regulation. We deny the specific rules modifications requested by NEPGA as too narrowly focused on a single competitive project. We will instead commence a rulemaking designed to encourage a full and robust stakeholder process so that all interests and issues may be considered. Our grant of rulemaking does not signal our agreement with any of the factual allegations contained in NEPGA's request or in PSNH's response.

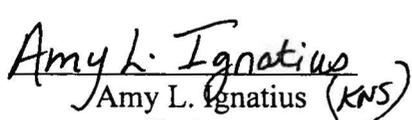
Based upon the foregoing, it is hereby

ORDERED, NEPGA's request to open a rulemaking is **GRANTED** and the requested modifications are **DENIED**; and it is

FURTHER ORDERED, that all interested parties are invited to comment on appropriate changes to Puc 2100; and it is

FURTHER ORDERED, in accordance with RSA 541-A:4, that on or before January 13, 2015, the Commission will commence a rulemaking to review Puc 2100.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of October, 2014.


Amy L. Ignatius (KNS)
Chairman


Robert R. Scott
Commissioner


Martin P. Honigberg
Commissioner

Attested by:


Debra A. Howland
Executive Director