

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 11-014

NORTHEAST UTILITIES -NSTAR MERGER REVIEW

COMMENTS OF NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.

Introduction

On January 18, 2011, the New Hampshire Public Utilities Commission (“PUC” or the “Commission”) issued a letter request for comments (“Letter Request”) initiating this informational docket. The Commission seeks to (1) gather information regarding any impacts that the proposed merger between Northeast Utilities (“NU”) and NSTAR (the “Proposed Merger”) may have on Public Service Company of New Hampshire (“PSNH”), a subsidiary of NU, and its customers, and (2) hear arguments concerning the Commission’s jurisdiction under New Hampshire law to exercise prior approval authority over the proposed merger. The Letter Request provides for a February 7, 2011 public informational session at the Commission and the opportunity for public comment. At the February 7, 2011 hearing, the Commission provided an opportunity for comments by February 25, 2011.

Pursuant to the Commissioner’s Order, the New England Power Generators Association, Inc. (“NEPGA”) is pleased to offer the following comments regarding the impacts of the Proposed Merger.¹

¹ The comments contained in this filing represent the position of NEPGA as an organization, but not necessarily the position of any particular member(s) with respect to any statement, concept, issue or position expressed herein.

Background

NEPGA is a private, non-profit entity that advocates for the business interests of non-utility electric power generators in New England. NEPGA's member companies represent approximately 27,000 megawatts of electrical generating capacity throughout the New England region, with approximately 2,600 megawatts in New Hampshire.² NEPGA's mission is to promote sound energy policies which will further competitive energy markets, economic development, jobs, and a balanced environmental policy. NEPGA's member companies are responsible for generating and supplying electric power for sale within the New England bulk power system.

On October 18, 2010, NU and NSTAR issued a press release announcing the Proposed Merger ("Press Release").³ The Proposed Merger will create a new entity with an enterprise value of approximately \$18 billion, a market cap of approximately \$10 billion and over 3.5 million customers in three states.⁴ The new entity, a self-described "merger of equals" (hereinafter referred to as "NU-NSTAR"), would expand opportunities beyond what either company could accomplish individually, particularly in energy resource development and

² NEPGA's member companies are responsible for generating and supplying electric power for sale within the New England bulk power system. NEPGA has offices at 141 Tremont Street, Boston, MA.

³ See *Press Release*, available at <http://nuwnotes1.nu.com/apps/corporatecommunications/empinfo.nsf/0/A5CD1980C4533B7E852577C00037813C?OpenDocument>

⁴ See *Joint Testimony of James J. Judge and David R. McHale*, at 19 ("*Joint Testimony*") as jointly filed by NU and NSTAR in Massachusetts Docket D.P.U. 10-170. The NU/NSTAR filing in Massachusetts is available at <http://www.env.state.ma.us/dpu/docs/electric/10-170/112410nstpt.pdf> and a copy was provided at the February 7, 2011 hearing. Notwithstanding any implications to the contrary, the so called Joint Testimony does not present an in-depth substantive evaluation of the impacts of the merger—even PSNH, in its presentation, was reluctant to describe it as anything more than a "summary" or an "executive summary" of the merger transaction. See, *In re: DE 11-014 Northeast Utilities, Inc. Re: NU/NSTAR Merger Review*, Hr. Tr. 52:3-5 (Feb. 7, 2011) ("Hr. Tr.").

transmission, *e.g.*, needed infrastructure investment, “to achieve the energy goals and policies established by the . . . New England region.”⁵

In its public pronouncements of the Proposed Merger, NU-NSTAR has consistently emphasized its definitive plans to aggressively expand development of renewable and other generation resources and transmission infrastructure.⁶ As noted below, NU-NSTAR’s Proposed Merger will substantially and directly impact NU, PSNH and PSNH’s customers

NEPGA Comments

The Proposed Merger of NU and NSTAR will combine two neighboring utilities to create a new energy provider controlling a large share of generation, transmission and distribution business in New Hampshire and in New England with stated plans to develop large scale energy generation and deliver electricity into the largest load centers in New England. This merger will expand the already extensive footprints of NSTAR and NU in New Hampshire and in the region.⁷ The impact of this new company cannot be underestimated — a new entity will emerge, with combined capital, resources and influence, to replace what had been NU and NSTAR individually and this will inevitably impact PSNH and New Hampshire consumers. The new company will be the dominant transmission and distribution player in ISO New England, Inc. (“ISO-NE”) markets and will have the potential to undermine competitive markets, competition, and established competitive practices that have evolved in the restructured ISO-NE markets for over a decade.

⁵ *Joint Testimony*, at 21.

⁶ See *NU-NSTAR Proposed Merger Presentation*, at 4, 6, 8 (Oct. 18, 2010), available at http://www.nu.com/investors/presentations/NU_NST_Investor_Presentation.pdf (“*Merger Presentation*”).

⁷ The merger will create the largest utility in the region, with over three million electric customers. *Merger Presentation* at 4, 5, 6. See also Hr. Tr. 15:5.

NU-NSTAR (and not the existing NU) will be the driving force in developing energy strategies and implementing generation and transmission policies and practices that will impact New Hampshire ratepayers for decades. If the Department determines to undertake review of the Proposed Merger in the instant case, the Department must weigh many factors, including impacts on the competitive markets, competition, system operation and reliability, rates, and the public interest.⁸

Although not all impacts may be identified at this early stage of the proceeding, there are indications that NU-NSTAR may pursue business strategies that will significantly and adversely impact competitive markets, PSNH and New Hampshire electric customers. In this regard, NU-NSTAR has specific plans to expand both energy generation and transmission facilities into New Hampshire, and the Commission has an interest in assuring that PSNH maintains its existing (and future) generation, transmission and distribution facilities in New Hampshire in a safe and reasonable manner. For example, NU-NSTAR's plans to develop generation resources will directly impact competitive development of such resources and the cost of such development as ultimately borne by ratepayers.⁹ NU-NSTAR's plans in this respect could undermine competitive market development and/or result in uneconomic and more costly generation than would otherwise be the case.¹⁰

⁸ In its Letter, the Department has requested comment upon the extensive statutory provisions that may be applicable in the instant case. As a common thread, these provisions require that the Department consider the public interest and/or the impact on customers directly. *See* RSA 369:8 (requiring that the proposed transaction "not have an adverse effect on rates, terms, service, or operation of the public utility"); RSA 369-B:3, IV, (b)(4) (requiring that the proposed transaction "result[] in the receipt by PSNH customers of a just and reasonable amount of the cost savings"); RSA 374:30 (requiring the proposed transaction be in the "public good"); and RSA 374:33 (requiring the proposed transaction be "lawful, proper and in the public interest").

⁹ *Merger Presentation*, at 8.

¹⁰ Indeed, the reorganization will create new opportunities for the new entity and PSNH to significantly expand its operations and role in New Hampshire. *See Merger Presentation*, at 6; *also Northeast Utilities General Talking Points* handout distributed February 7, 2011. Given NU-NSTAR's extensive expansion plans and the likely other impacts of the Proposed Merger as set forth herein, the Commission should also evaluate, as part of its consideration

Significantly, NU-NSTAR's proposed Northern Pass transmission project, as well as other transmission under consideration, if approved, may impact wholesale competitive market pricing and the development of alternative generation in wholesale markets, and thus will ultimately impact costs borne by and rates paid by customers.¹¹ Moreover, the Northern Pass project will have a significant physical impact on New Hampshire ratepayers as it is currently designed to extend 140 miles from the Canadian border to Franklin, New Hampshire.¹²

Further, NU-NSTAR's plans with respect to default service procurement will also directly impact customers as it will affect default service rates.¹³ Specifically, questions remain regarding whether the reorganized NU-NSTAR will implement policies that will continue to impose substantial burdens on New Hampshire ratepayers from uncompetitive procurement practices and from continued ownership and operation of uneconomic electric generation. At the very least, NU-NSTAR's plans to build generation (and sell power), as noted above, will further complicate the already complex procurement practices that result from the hybrid model and PSNH's current ownership of generation in New Hampshire.

In short, there is every reason to assume that NU-NSTAR will implement important policies and practices that will substantially impact PSNH and PSNH's customers with respect

of the Proposed Merger, whether it is in the public interest for PSNH to retain its generation resources in New Hampshire or whether ratepayers would benefit from PSNH's divestiture of those assets. PSNH's divestiture of its generation assets is currently at issue in its customer migration docket where intervenors suggest that the migration and related cost allocation issues would be resolved if PSNH was fully restructured like other New Hampshire electric distribution companies. See *PSNH Customer Migration*, Docket No. DE 10-160, Testimony of Daniel W. Allegretti, p. 19 (Sep. 15, 2010).

¹¹ *Merger Presentation*, at 6.

¹² See *Application for Presidential Permit; Northern Pass Transmission LLC*, OE Docket No. PP-371, Notice of Application, 75 FR ¶ 69,990 (Nov. 16, 2010). In addition, the Northern Pass Project also includes a 40 mile radial line from Franklin, New Hampshire to Deerfield, New Hampshire. *Id.*

¹³ Competitive procurement and customer migration are important on-going concerns to the Commission. See *PSNH Customer Migration*, Docket No. DE 10-160.

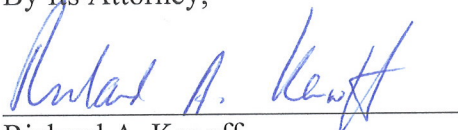
to, among other things,¹⁴ generation, transmission and competitive procurement. All of these policies and related impacts warrant consideration by the Commission in advance of the Proposed Merger.

Conclusion

NEPGA appreciates the opportunity to provide comments on the Proposed Merger, and urges the Commission to fully evaluate the likely impacts of the Proposed Merger on competitive markets and ratepayers in New Hampshire.

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¹⁴ For example, the Proposed Merger may impact system reliability, competition, fuel supply and diversity, all of which will impact customers. *Joint Testimony*, at 15-16.