



Via Electronic and First Class Mail

February 22, 2013

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



Re: IR 13-020 Investigation into Market Conditions Affecting PSNH and its Default Service Customers and the Impact of PSNH's Ownership of Generation on the Competitive Electric Market

Dear Secretary Howland,

The Sierra Club believes that it is vitally important that the investigation currently being undertaken by the Commission in Docket No. IR 13-020 (originally DE 13-020) be conducted in a public and transparent fashion, and requests that it be granted intervenor status in the docket.

The investigation in Docket No. IR 13-020 will, as per the Order of Notice, be wide-ranging, and involve matters of great importance to New Hampshire residents and ratepayers: the safety and reliability of PSNH's service, and the implications of PSNH's "continued ownership and operation of generation facilities," among others. Order of Notice at 1. Public participation in the Commission's determination of such issues is imperative.

Moreover, it appears that IR 13-020 is intended to function as a replacement for docket actions that *would* be open to public participation. As part of its resolution of Docket No. DE 10-261, the 2010 PSNH Least Cost Integrated Rate Plan ("LCIRP") docket, the Commission ordered that a full subsequent LCIRP process would not be necessary, as the investigatory Docket No. IR 13-020 "may address some of the parties' concerns in this LCIRP proceeding" and thus in order to "avoid redundancies and . . . administrative burden," IR 13-020 would function in lieu of that full LCIRP. Order No. 25,459 at 21.

However, while a LCIRP docket would involve direct intervenor participation—such as through submission of testimony, briefing, and promulgation of data requests—as well as public availability of docket materials, it is not at all clear that such participation and public access is contemplated here in IR 13-020. Indeed, the Commission has merely ordered that Staff "make inquiries of other stakeholders **as needed** in its investigation," Order of Notice (Jan. 18, 2013) at

6 (emphasis added), and has subsequently indicated that it perceives “no need for interventions.” Sec. Ltr. (Feb. 13, 2013) at 1.

An investigatory docket without public participation is an insufficient proxy for the analysis of a LCIRP. Indeed, it is a basic principle of due process, underscored in various provisions of New Hampshire law, including the Administrative Procedures Act, and New Hampshire Supreme Court case law, that this Commission has followed throughout its existence, that affected parties be given a full and fair opportunity to participate in proceedings before the Commission. Furthermore, the open-ended nature of this docket and the absence of any statements from the Commission as to a timeline for the investigation or when it plans on reporting findings to the public are very troubling.

The Sierra Club’s “rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding” in IR 13-020, and thus the Sierra Club meets the Commission’s standard for intervention. *See* RSA 541-A:32.I(b); *see also* RSA 365:19 (when the Commission undertakes an independent investigation which “disclose[s] any facts which the Commission shall intend to consider in making any decision or order . . . any party whose rights may be affected shall be afforded a reasonable opportunity to be heard”). As such, the Sierra Club respectfully requests that it be allowed to participate as an intervenor in Docket No. IR 13-020, and that the Commission assure the participation of those whose vital interests are at stake by incorporating public notice and transparency into its investigation.

Sincerely,



Zachary M. Fabish

Staff Attorney

Sierra Club

50 F Street, NW - 8th Floor

Washington, DC 20001

Phone: (202) 675-7917

Email: zachary.fabish@sierraclub.org

Cc: Susan W. Chamberlin
Consumer Advocate
21 S. Fruit St., Suite 18
Concord, NH 03301-2429