

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 14-238

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Determination Regarding PSNH's Generation Assets

**SIERRA CLUB'S RESPONSE TO PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE'S RESPONSE AND OBJECTIONS TO
PETITIONS TO INTERVENE**

NOW COMES the Sierra Club ("SC"), pursuant to Puc 203.07(e), and hereby responds to the above-referenced Response and Objections to Petitions to Intervene filed by PSNH with the Commission on October 2, 2014 (the "Objection"). In support of this Response, SC asserts the following:

1. PSNH's Objection suffers from a fundamental misapprehension as to what constitutes an "interest" under the standard for petitions to intervene in dockets before this Commission, and accordingly PSNH mistakenly argues that intervention by SC is unwarranted. Contrary to PSNH's claims, SC's "rights, duties, privileges, immunities or other substantial interests may be affected" by the proceeding in this docket, and SC's participation in the docket "would not impair the orderly and prompt conduct of the proceedings." RSA 541-A:32. Accordingly, SC's petition should be granted.

2. As per RSA 541-A:32, intervention is warranted, in pertinent part, where the "petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding," or where "such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." RSA 541-A:32 I, II. Here, SC's proposed intervention is plainly warranted. As explained in

SC's Petition, SC's members and SC itself have a direct and substantial interest in the outcome of this proceeding: this docket fundamentally addresses the future of very large and environmentally significant pieces of civil infrastructure, and thus the decisions here made will have impacts on the air, water, and land that SC's members breathe, drink, and work and recreate in, as well as upon the rates they pay for electricity, and the future environmental risks and liabilities borne by the power sector that New Hampshire residents—including SC members—ultimately must pay for. *See* SC Petition at 1-2. Indeed, SC's significant interests in this proceeding, as well as the propriety and utility of its contributions to the process, are further demonstrated by its participation in Docket IR 13-020, where SC submitted comments and engaged with the PUC in providing information concerning environmental risks and costs related to the operation of PSNH's generating assets; SC has also participated meaningfully and constructively in numerous prior dockets before this Commission. *See id.* at 2-3.

3. In face of this, PSNH argues that, because one aspect of the docket to be determined by the Commission is the “economic interests” of PSNH's customers, the only interests that intervenors could possibly have are, likewise, the “economic interests” of PSNH's customers. However, such an argument fundamentally misunderstands what RSA 541-A:32 is all about. The test of RSA 541-A:32 is whether or not the *determination* in a proceeding—whatever it may be, and on whatever basis it may be made—may impact the interests of an intervenor, not whether or not the determination *is* the interest of the intervenor. Ultimately, it is textbook law that the interests of a potential party are dictated by the impacts of a determination in a proceeding, not on the

standard by which that determination is made. PSNH's Objection should accordingly be denied.¹

4. Even if PSNH were correct in its unsupported claim that an intervenor's interests are, at most, identical to whatever legal issue is to be determined in a docket—which it is not—PSNH additionally misrepresents the scope of this particular proceeding. Although PSNH claims in its Objection that the “singular interest at stake” in this docket is “the economic interests of PSNH's retail customers” (Objection at 2), both the Order of Notice and HB 1602 detail a wide range of issues to be determined in this docket, including, among others:

- a. The economic interest of PSNH's retail customers;
- b. Evaluation of continued operation of PSNH's generation assets;
- c. Evaluation of “possible repowering” of PSNH's generation assets;
- d. Evaluation of “modification or retirement” of PSNH's generation assets;
- and,
- e. Which generation assets and long-term contracts for generation supply should be included in this proceeding;

See HB 1602; Order of Notice.² Any number of these issues (as described and explained in SC's Petition) may affect the rights, duties, privileges, immunities or other substantial interests of the Sierra Club. Simply put, the scope of this docket and the interests

¹ PSNH also bizarrely claims that SC's “bases for intervention are no different than those of CLF rejected by the Commission in Docket No. DE 14-120,” despite the fact that the Commission *granted* CLF's intervention in that proceeding. *See* Objection at 10; *cf.* DE 14-120, Order No. 25,689 (July 7, 2014).

² PSNH's minimalist take on the issues subject matter of this docket is also premature: the Commission has directed the parties to undertake a technical conference and two rounds of briefing to help provide the Commission with useful information on what issues, concerns, and evidence this proceeding should involve.

implicated are far larger than PSNH would lead this Commission to believe, and warrant SC's intervention. Indeed, as noted above, SC's role in providing the Commission with information in docket IR-020 and submitting comments on the reports generated in that docket concerning many of the issues the legislature subsequently directed the Commission to examine in the current proceeding are only further confirmations that SC's intervention is proper under RSA 541-A:32. PSNH's Objection should be denied.

5. Nor is PSNH's requested alternative relief warranted. PSNH claims that if SC's intervention is granted, SC should be merged into a single entity with Conservation Law Foundation ("CLF") for the purposes of this proceeding and/or be required to share briefing pages. PSNH makes this argument by conjecturing, without any real basis, that different parties might nonetheless have identical interests.³ Besides presuming to dictate to intervenors what their respective interests in this proceeding are, PSNH, by proposing a forced merger of different parties, would do nothing to advance the interests of this docket, and would in fact run the severe risk of generating precisely the sort of disruptions and impairments to the orderly and prompt conduct of the docket that PSNH claims to wish to avoid. Requiring different parties to assume single-party status on the basis of perceived general and superficial similarities runs the very great risk of those parties needing to come before the Commission and seek—perhaps on an emergency basis—permission to dissolve such imposed bonds as potentially divergent positions develop as the proceeding moves forward. It also runs the risk of this Commission

³ PSNH makes no attempt to articulate *why* allowing separate parties to intervene as separate parties would disrupt this proceeding in any way. Nor could it—CLF and SC have participated as separate parties in multiple dockets before this Commission in the past, including particularly in Docket DE 11-250 (in which CLF and SC have coordinated for discovery purposes), and nothing about such separate participation has been disruptive.

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Dated: October 9, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Sierra Club's Response to Public Service Company of New Hampshire's Response and Objections to Petitions to Intervene has been served electronically on the persons in the Commission's service list in accordance with Puc 203.11 this 9th day of October, 2014.

/s/
Zachary M. Fabish