

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 14-238

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Determination Regarding PSNH's Generation Assets

Order Granting Petitions to Intervene

ORDER NO. 25,733

November 6, 2014

In this order, we grant all pending petitions to intervene. We grant the following petitions under RSA 541-A:32, I, the mandatory section of the intervention statute: OEP, the cities of Berlin and Manchester, IBEW, and Mr. Aalto. We grant the remaining petitions under the discretionary section, RSA 541-A:32, II. We will address any conditions on the parties' participation at a later date.

I. PROCEDURAL HISTORY

This docket is a legislative directive, opened to consider "whether all or some of PSNH's generation assets should be divested." RSA 369-B:3-a, I. The statute tells us to consider "the economic interest of retail customers of PSNH" and to provide for the cost recovery of any divestiture that we may order. *Id.*

The Order of Notice declared that Public Service Company of New Hampshire (PSNH) is a mandatory party to this proceeding. The Office of Consumer Advocate (OCA) filed a notice of its intent to participate on behalf of residential ratepayers pursuant to RSA 363:28.

The following 14 parties filed petitions to intervene: the New Hampshire Office of Energy and Planning (OEP), the City of Berlin, the City of Manchester, the International Brotherhood of Electrical Workers, Local #1837 (IBEW), Pentti J. Aalto, the Business and

Industry Association (BIA), the Conservation Law Foundation (CLF), the New England Power Generators Association (NEPGA), the Retail Energy Supply Association (RESA), TransCanada Power Marketing, Ltd. (TC Power Marketing), TransCanada Hydro Northeast, Inc. (TC Hydro), the Granite State Hydropower Association (GSHA), the Sierra Club, and the New Hampshire Sustainable Energy Association, d/b/a NH CleanTech Council (NHCTC).

POSITIONS OF THE PARTIES

A. OEP

OEP is an executive branch agency that advises the Governor on energy policy. OEP states that its predecessor agency was a party to the electric restructuring docket, DE 99-099, and signed the settlement agreement which largely resolved that case (the 1999 Settlement Agreement). September 23, 2014, *Office of Energy and Planning Petition to Intervene*, at 1. One issue noticed in this docket is “the status of the 1999 restructuring settlement agreement with PSNH in Docket No. DE 99-099.” Order of Notice at 2. OEP states it has an “ongoing interest” in the issues to be addressed in this docket and seeks intervention “in the interests of justice.” Petition at 1.

B. Berlin

Berlin is a municipality where one of PSNH’s hydroelectric facilities is located. Berlin seeks intervention because the 1999 Settlement Agreement grants a preference to those municipalities with PSNH hydroelectric facilities, and because that facility is one of the most valuable taxable assets in Berlin. September 29, 2014, *Petition to Intervene of the City of Berlin*, at 1. Berlin alleges it qualifies under the mandatory intervention section because it has a direct interest in the 1999 Settlement Agreement and in its municipal tax base.

C. Manchester

Manchester is also a municipality that hosts one of PSNH's hydroelectric facilities. Manchester cites Section VIII.E. of the 1999 Settlement Agreement, which provides Manchester the opportunity to buy that facility. September 26, 2014, *Petition to Intervene of the City of Manchester*, at 1. Manchester argues it also has an interest in the value of the hydroelectric facility even if bought by another party. *Id.* at 1-2.

D. IBEW

The IBEW is a labor union that represents 173 workers at PSNH's generation facilities. September 24, 2014, letter at 1. Section X of the 1999 Settlement Agreement, titled "Employee Protection," contains specific provisions relating to PSNH employees including those represented by the IBEW. The IBEW seeks to intervene to protect the interests of its members.

E. Mr. Aalto

Mr. Aalto is a PSNH customer who states he is exposed to possible rate increases as a result of this docket. Mr. Aalto also notes that he was involved in the original restructuring process. September 30, 2014, *Petition to Intervene of Pentti J. Aalto*.

F. BIA

The BIA is a nonprofit business association which advocates for policies that promote and preserve the economic well-being of the state. It has approximately 400 businesses in New Hampshire, which represent all segments of the commercial and industrial sectors. September 25, 2014, *Petition for Intervention* at 1. The BIA claims that the resolution of this docket will directly affect those BIA members who are commercial and industrial customers of PSNH.

G. CLF

CLF states that it is “a private, non-profit membership organization dedicated to protecting New England’s environment for the benefit of all people.” September 26, 2014, *Petition to Intervene of Conservation Law Foundation*, at 1. CLF states it has over 4,100 members, 500 in New Hampshire, including at least 200 PSNH customers. *Id.* CLF states that it “represents the interests of its members in avoiding adverse economic impacts associated with continued use and reliance on uneconomic, environmentally unsustainable electricity generation,” including PSNH’s coal-fired plants. *Id.* CLF seeks to intervene to protect the environmental and economic interests of its PSNH customer members, whose rates may be affected by this docket. *Id.* at 2.

H. NEPGA and RESA

NEPGA and RESA filed a joint intervention request. September 29, 2014, *Petition to Intervene on Behalf of New England Power Generators Association, Inc. and Retail Energy Supply Association*. NEPGA is a trade association that represents competitive electric generators, sometimes called merchant generators, who participate in the wholesale market. *Id.* at 3. NEPGA’s members own approximately 26,000 megawatts of electric generating capacity, with more than 2,600 megawatts owned by its New Hampshire members. *Id.* at 2. NEPGA states that its mission is to “promote sound energy policies to further economic development, jobs, and balanced environmental policy.” *Id.* at 2-3. The petition states that “NEPGA believes that sustainable competitive markets are the best means to provide long-term reliable and affordable supplies of electricity for consumers.” *Id.* at 3.

RESA is a trade organization that represents the interests of competitive retail energy suppliers. Its members include competitive suppliers authorized by the Commission to provide retail service to customers in New Hampshire. *Id.* at 3-4.

NEPGA and RESA state that they have “knowledge and experience that are likely to be of value to the Commission and other parties in this proceeding.” *Id.* at 4. NEPGA and RESA allege that they satisfy both the mandatory and discretionary intervention standards of RSA 541-A:32. NEPGA and RESA note that their intervention, rather than multiple petitions to intervene by their member companies, will help streamline this docket. NEPGA and RESA volunteered to coordinate their participation. *Id.* at 4-5.

I. TransCanada

TC Power Marketing and TC Hydro (together the TransCanada Intervenors) also filed a joint intervention request. September 29, 2014, *Petition to Intervene on Behalf of TransCanada*. The petition states that TC Hydro owns and operates approximately 567 megawatts of hydroelectric generation capacity on the Connecticut and Deerfield Rivers. *Id.* at 1. TC Power Marketing is a competitive electricity supplier registered to serve customers in New Hampshire. *Id.* at 2. The TransCanada Intervenors state that TC Hydro’s rights as a generator selling to the wholesale market and TC Power Marketing’s rights as a competitive supplier serving retail customers “may be affected by the Commission’s decision on issues addressed in this docket.” *Id.* The TransCanada Intervenors also state that they have “knowledge that could be of value” in this docket. *Id.* The TransCanada Intervenors offered that TC Power Marketing and TC Hydro would work as a single party in this proceeding.

J. GSHA

GSHA is a trade association for “the small, independent hydroelectric power industry in New Hampshire.” September 29, 2014, *Petition to Intervene on Behalf of Granite State Hydropower Association*, at 2. GSHA members represent more than 50 hydroelectric facilities with a capacity of more than 50 megawatts. *Id.* They primarily sell power at wholesale to distribution utilities, including some sales under the terms of the 1999 Settlement Agreement. *Id.* Some members are also PSNH retail customers. *Id.* at 3.

GSHA states that its members’ interests are likely to be affected because they may enter power purchase agreements with wholesale power buyers, including PSNH, upon the expiration of their current rate orders or agreements. GSHA’s members will also be in the same competitive position as PSNH’s hydroelectric facilities should those facilities be divested. *Id.* at 3. Finally, GSHA states that it “has knowledge and experience that are likely to be of value to the Commission and other parties.” *Id.* at 4.

K. Sierra Club

The Sierra Club is a national environmental organization with more than 618,000 members, including over 3,800 in New Hampshire. September 29, 2014, *Petition for Intervention by the Sierra Club*, at 1. The Sierra Club argues its “direct and substantial interest[s]” in this proceeding fall into two categories. First, the Sierra Club cites “the environmental and public health impacts resulting from a determination as to the future of PSNH’s generating assets.” *Id.* at 2. Second, the Sierra Club argues that this proceeding “directly impacts the economic interests of the Sierra Club’s New Hampshire Chapter members as ratepayers.” *Id.* The Sierra Club states that it can provide information on the environmental

impacts of operating PSNH's generating assets and on their long-term environmental compliance costs and requirements. *Id.* at 3.

L. NHCTC

NHCTC has residential and business members. It educates and advocates for sustainable energy in New Hampshire by promoting clean energy policies and by attracting investment for such development. September 29, 2014, *Petition for Intervention*, at 1. NHCTC states it has an interest in this docket because "the sources and ownership structures of electric generation assets in NH affect our members and concerns our guiding principles, which include advocating for competitive and open markets [and] the retention of energy-based dollars within NH's economy." *Id.*

M. PSNH

PSNH does not object to the intervention requests of OEP, Berlin, Manchester, the IBEW, and Mr. Aalto. PSNH notes that OEP's predecessor signed the 1999 Settlement Agreement and is thus bound by its requirement to "support this Agreement before the PUC." *Response and Objections*, at 4 (quoting the 1999 Settlement Agreement at section XVII.D.). PSNH agrees that Berlin and Manchester have substantial rights in this proceeding arising from the 1999 Settlement Agreement's provisions relating to PSNH's hydroelectric assets. As to the IBEW, PSNH notes that the 1999 Settlement Agreement, RSA 369-B:3-b, and other statutes specifically recognize the interests of the IBEW's members. *Response and Objections* at 4-5. Finally, PSNH agrees that Mr. Aalto is a retail customer of PSNH whose rights fall within the RSA 369-B:3-b's requirement that we consider the economic interest of PSNH's retail customers. *Id.* at 5.

PSNH objects to BIA's request to intervene because BIA's "generalized statement of interest does not set forth any clearly demonstrated rights, privileges, or substantial interests that warrant the grant of intervenor status." *Id.* at 5. PSNH argues that BIA does not meet the intervention standard as set forth in *Liberty Utilities*, Order No. 25,715 (Sept. 8, 2014), or the legal standing requirement discussed in *North Atlantic Energy Corp.*, Order No. 24,007 (July 8, 2002). *Id.* In *Liberty Utilities*, we stated that a "general interest in competitive markets or in a bidding process that has not yet occurred is insufficient to entitle these parties to intervene pursuant to RSA 541-A:32, I." Order No. 25,715 at 6. The statement PSNH quoted from *North Atlantic Energy* is 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." Order No. 24,007 at 3.

PSNH objects to the intervention requests of NEPGA, RESA, GSHA, and the TransCanada Intervenors. *Id.* at 6-9. PSNH argues that the TransCanada Intervenors do not satisfy the *Liberty Utilities* test, or the legal standing requirement of *North Atlantic Energy*. PSNH states that NEPGA and RESA assert only "generalized interests in 'sound policy,' 'economic development, 'balanced environmental policy,' and 'a competitive generation market.'" *Id.* at 7. PSNH argues these interests do not meet the statutory requirements of RSA 541-A:32. PSNH also argues that these four parties "would likely impair the orderly conduct of this proceeding" through their conduct of discovery and through the complications that will arise with confidential information. *Id.* at 7-8.

PSNH objects to the intervention of CLF and the Sierra Club. PSNH argues that the interests of these environmental groups are not relevant to this docket's standard, "the economic interest of retail customers of PSNH." RSA 369-B:3-a. To the extent CLF and the Sierra Club rely on the financial interests of their rate paying members, PSNH questions that their goal is to

protect those interests. PSNH cited *Public Serv. Co. of N.H.*, Order No. 25,689 at 5 (July 7, 2014), a reconciliation proceeding where we stated that “CLF has not demonstrated any rights, duties, or privileges that would be affected by this docket and that would mandate its intervention.”¹ *Response and Objections* at 9-10. PSNH also argues that the participation of CLF and the Sierra Club may lead to delays, citing CLF’s request that it not be consolidated with any other party. *Id.* at 10.

PSNH objects to NHCTC’s intervention. PSNH argues NHCTC’s petition offered no explanation of the rights allegedly affected by this proceeding. PSNH also argues NHCTC’s “guiding principles” are too broad and unrelated to the economic interests of PSNH’s retail customers. *Id.* at 11.

As to all parties, in the event we grant intervention, PSNH argues in the alternative that we should take several steps to manage their participation. PSNH argues that we should consolidate parties even if their interests do not perfectly align. PSNH suggests limiting a party’s participation to the issues of concern that brought that party to this docket. PSNH argues for page limits on filings and combined page limits for similarly situated parties. PSNH also argues for warnings that non-compliance with discovery rules may warrant limitation or revocation of intervenor status. *Response and Objections* at 11-13.

N. Staff

Staff supports the requests of OEP, Manchester, Berlin, the IBEW, and Mr. Aalto under the mandatory intervention standard of RSA 541-A:32, I. Transcript of October 2, 2014, prehearing conference (Tr.) at 14-15. Staff does not object to the intervention requests of the remaining petitioners under the discretionary intervention standard, RSA 541-A:32, II.

¹ In that order we did grant CLF’s petition to intervene under the “interests of justice” standard because “CLF may further the Commission’s understanding of the financial prudence and financial effect of PSNH’s decisions to self-generate rather than purchase power on the market.” *Id.* at 6.

Tr. at 15-18. Staff also suggests that consolidation of certain parties by the Commission at a future date may be appropriate and desirable. Tr. at 16-18.

II. COMMISSION ANALYSIS

Petitions to intervene are governed by RSA 541-A:32. *See* N.H. Admin. Rules Puc 203.17 (“The commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32”). That statute provides two options for granting intervention.

The first is mandatory:

The presiding officer *shall* grant one or more petitions for intervention if:

(a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;

(b) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

RSA 541-A:32, I (emphasis added). The second option is discretionary: “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.” RSA 541-A:32, II (emphasis added).

PSNH argues that some proposed intervenors failed to establish “legal standing.” *See, e.g., Response and Objections* at 9 (“competitors in the marketplace ... should not be granted legal standing in this proceeding”). Legal standing is not the appropriate standard here. “[T]he principles underlying the agency’s intervention practices are entirely different from the principles that apply [to seeking review of agency decisions].” *Ruel v. New Hampshire Real*

Estate Appraiser Bd., 163 N.H.34, 41(2011) (citation omitted); see *Duncan v. State*, __N.H.__, slip op. at 10 (Aug. 28, 2014) (“standing under the New Hampshire Constitution requires parties to have personal legal or equitable rights that are adverse to one another with regard to an actual, not hypothetical, dispute, which is capable of judicial redress”) (citations omitted). Intervention under RSA 541-A:32 requires a lesser showing than judicial standing. We now turn to the specific intervention requests.

We find that OEP, Berlin, Manchester, and the IBEW satisfy the requirements for mandatory intervention, because the 1999 Settlement Agreement may play a role in the outcome of this docket. OEP is a party to that document. Manchester and Berlin have certain rights under the 1999 Settlement Agreement related to PSNH’s hydroelectric facilities in those cities. The IBEW represents workers whose rights are also outlined in the 1999 Settlement Agreement. In addition, RSA 369-B:3-b extends certain employee protections set forth in the original proposed settlement defined in RSA 369-B:2, VIII, to affected employees, including IBEW workers, in the event of divestiture or retirement of any or all of PSNH’s generation assets. We thus grant these four parties intervention under RSA 541-A:31, I.

Mr. Aalto also meets the requirements of RSA 541-A:32, I, as a PSNH ratepayer. The outcome of this docket will have a direct impact on the rates Mr. Aalto pays. His motion to intervene is thus granted.

We find that the remaining parties seeking intervention do not clearly meet the standards of RSA 541-A:32, I, but they satisfy the “interests of justice” standard of RSA 541-A:32, II. BIA represents the interests of commercial ratepayers. Since the BIA’s members may fall into the statutory category of “retail customers of PSNH” under RSA 369-B:3-a, I, we would likely grant their individual petitions to intervene. Although this does not automatically confer on BIA

the right to intervene, BIA's stated economic interests in this docket are consistent with the interests its members would likely raise. We find under the unique circumstances of this docket that we should hear from a single voice speaking on behalf of that constituency. We thus grant BIA's petition to intervene under RSA 541-A:32, II.

NEPGA, RESA, GSHA, and the TransCanada Intervenors are wholesale generators and retail suppliers whose interests revolve around the effects that this docket may have on the electricity markets, whether or not we decide to order divestiture. Their interests are not sufficiently direct to support mandatory intervention, but they may raise issues, present information, and provide guidance for us as we conduct this proceeding. We thus grant their intervention requests under the statute's permissive section. Although there is likely overlap in what these parties may contribute, which may militate in favor of consolidating or limiting their participation as authorized by RSA 541-A:32, III, we are not requiring consolidation at this time. We will address that issue after we define the scope of this docket.

CLF and the Sierra Club are member-based environmental organizations. To the extent they focus on economic issues, they do so through an environmental lens. Like the BIA, their rate-paying members would likely be granted intervention if individually requested. We find it better to allow the organizations to intervene. We also find that that the perspectives of CLF and the Sierra Club are important to this unique docket. We will similarly address any overlap in what CLF and the Sierra Club may offer, and the appropriateness of consolidating or limiting their participation, at a later time.

NHCTC is another member-based organization with a different mix of members and a mission of promoting sustainable and clean energy. NHCTC has both residential and business members who may qualify as individual ratepayer interveners. NHCTC may offer yet another

perspective in this docket. We thus grant its petition to intervene in the interests of justice, and will examine potential limitation and/or consolidation of its participation at a later time.

Based upon the foregoing, it is hereby

ORDERED, that the petitions to intervene of the Office of Energy and Planning, the City of Berlin, the City of Manchester, the International Brotherhood of Electrical Workers Local #1837, and Pentti J. Aalto are granted pursuant to RSA 541-A:32, I; and it is

FURTHER ORDERED, that the petitions to intervene of the Business and Industry Association, the Conservation Law Foundation, the New England Power Generators Association, the Retail Energy Supply Association, TransCanada Power Marketing, Ltd., TransCanada Hydro Northeast, Inc., the Granite State Hydropower Association, the Sierra Club, and the New Hampshire Sustainable Energy Association, d/b/a NH CleanTech Council are granted pursuant to RSA 541-A:32, II.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 2014.



Robert R. Scott
Commissioner



Martin P. Honigberg
Commissioner

Attested by:



Debra A. Howland
Executive Director