

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Docket No. DE 16-693

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY

Petition for Approval of a Power Purchase Agreement
with Hydro Renewable Energy Inc.

OBJECTION
of
EVERSOURCE ENERGY
to
PETITIONS TO INTERVENE

November 4, 2016

Pursuant to RSA 541-A:32, N.H. Code of Admin Rule Puc 203.07, and the Order of Notice issued in this proceeding, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) hereby objects to the Petitions to Intervene (“Petitions”) filed in this proceeding by the Office of Energy and Planning (“OEP”), the Conservation Law Foundation, Inc. (“CLF”), NextEra Energy Resources, LLC (“NEER”), and the New England Power Generators Association, Inc. (“NEPGA”) (collectively, the “Petitioners”).¹ The Petitioners, do not meet the standards of RSA 541-A:32 to be granted intervenor status. In support of this Objection, Eversource states:

1. This docket pertains to a request by Eversource under RSA 374:57 for approval of a Power Purchase Agreement (“PPA”) entered into by Eversource with Hydro Renewable Energy Inc. (“HRE”). The purpose of that PPA is to provide additional direct economic benefits to Eversource’s Granite State customers from power that will be transported on

¹ The New England Ratepayers Association (“NERA”) also petitioned for intervention. In light of NERA’s purpose of ratepayer advocacy and its claims that its members include New Hampshire customers, Eversource does not object to NERA’s petition.

the Northern Pass Transmission line by HRE from Québec to the New England electricity market.

2. In the Order of Notice for this proceeding, the Commission set forth the legal and factual issues it believes are germane to this docket:

The filing raises, inter alia, issues related to whether Eversource has the corporate authority to enter into the Eversource-HRE PPA under RSA 374:57; notwithstanding any corporate authority, whether Eversource's entering into the Eversource-HRE PPA would violate the Restructuring Principles of RSA Chapter 374-F, or any other New Hampshire law, or any federal law, including the Federal Power Act, especially in light of the Commission's recent ruling in Docket No. DE 16-241, Order No. 25,950 (October 6, 2016), relating to an Eversource proposal to acquire gas capacity in which the Commission dismissed the petition as violating the Restructuring Principles of RSA Chapter 374-F; whether the inclusion of Eversource-HRE PPA costs in the SCRC would be permitted under RSA Chapter 374-F, RSA 374:57, RSA Chapter 378, the terms of the 2015 Restructuring Settlement, and Commission precedential standards for ratemaking, as just, reasonable, and in the public interest; whether Eversource's decision to forego a competitive solicitation process to identify and select the least cost supplier of products and services reflected in the HRE PPA comports with the requirements of N.H. Code Admin. Rules Puc 2100, and the standards of prudence applied by the Commission for such contracting; whether the assertions made by Eversource regarding expected benefits and costs of its participation in the HRE PPA are supported by the evidence, including evidence of economic and engineering costs, benefits, and feasibility.

3. These enumerated issues fall into two broad categories: 1) In New Hampshire's restructured electricity marketplace, may the state's regulated electric utilities contract for electric power as a means of mitigating electric rates; and, 2) Is the PPA presented by Eversource unreasonable and not in the public interest?

4. It is important to note issues that are not germane to this proceeding. Matters relating to neither the siting and permitting of the Northern Pass Transmission project, nor the potential wholesale electric market impacts of the existence of that project are part of this proceeding. Nor are issues relating to leases, easements, and other property rights part of this proceeding.

5. This proceeding relates solely to Eversource's petition to enter into an economic transaction with HRE, a non-affiliated third-party,² and provide the economic benefits of that transaction to its customers. No more; no less.

6. As Eversource has previously stated, the energy from the PPA "would NOT be used to supply default energy service but would be monetized by selling the entitlement back into the market with the monetary benefits flowing to customers to mitigate stranded costs," and "the methodology set forth in the Settlement for obtaining default energy service post-divestiture would NOT be impacted by any PPA with Hydro-Quebec." Order No. 25,830, Docket No. DE 14-238 (2015) at 3 (emphasis in original).

7. The New England energy market will not be impacted one way or another if the PPA is approved or rejected. HQ, through its affiliate HRE, will deliver the same amount of energy and capacity to New England regardless of whether the PPA is approved -- allowing Eversource's customers to benefit from the economic pricing provisions of the PPA -- or whether it is rejected and that same power is sold directly by HRE. Similarly, Eversource's provision of default energy service will not change -- either pre- or post-divestiture of the company's generation assets -- as a result of the PPA.

8. Ultimately, in this docket, the Commission must determine whether the state's electric utilities have the duty and authority to take measures to address the state's high costs of electricity, and, if so, whether the PPA presented by Eversource to address that cost issue is "unreasonable and not in the public interest," which is the standard set forth in RSA 374:57.

9. Under Puc 203.17, "The commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32." Under RSA 541-A:32, the standards for considering intervention requests are whether the petition states facts demonstrating

² HRE is a wholly-owned direct subsidiary of H.Q. Energy Holdings Inc., and an indirect subsidiary of Hydro-Québec (HQ).

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 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); or whether the 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).

10. Petition of OEP

- A. In its petition for intervenor status, OEP lists a number of prior dockets in which that office has participated. OEP also notes that it “has an ongoing interest in these issues.” But, OEP fails to note any rights, duties, privileges, immunities or other substantial interests that may be affected by the proceeding. Nor does it cite to any statutory right to intervenor.
- B. The Commission has previously held,³ and more recently reiterated, that generic or generalized interests in a proceeding do not justify a grant of intervenor status. “A general interest in competitive markets ...is insufficient to entitle these parties to intervene pursuant to RSA 541-A:32,1.” *Liberty Utilities (Granite State Elec.) Corp. d/b/a Liberty Utilities*, Order No. 25,715, Docket No. DE 14-211 (2014) at 3. *See also Liberty Utilities (EnergyNorth Nat. Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,864, Docket No. DG 15-362 (2016), at 3: “A general interest in franchise expansions, and the Commission's policy approaches thereto, by a peer utility is insufficient to entitle Northern to intervene pursuant to RSA 541-A:32, I.” In addition, the Commission has stated with respect to requests for intervention on the basis of an interest in policy, “all Commission rulings regarding such petitions implicate matters of policy of some interest” to some party, and allowing interventions on the basis of such policy concern would “result in unwarranted administrative

³ As the Commission has stated “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. . . . Merely expressing a concern about a relevant issue, no matter how well-intentioned, does not confer party status.” *North Atlantic Energy Corporation, et al.*, Order No. 24,007 (July 8, 2002) at 3, 6.

burden.” Order No. 25,864 at 3-4; *see also*, *PNE Energy Supply, LLC, et al. v. PSNH d/b/a Eversource Energy*, Order No. 25,881 (April 8, 2016) in Docket No. DE 15-491 at 4 (stating that “generalized concerns and generic interests” did not warrant intervention.)

- C. As OEP has only stated a general ongoing interest in the subject of this proceeding, and failed to state facts demonstrating any basis for the grant of intervenor status, its petition should be denied.

13. Petitions of NEER and NEPGA

- A. In its petition for intervenor status, NEER states that it is a “key player in the wholesale power generation market in New England” that owns and operates generating facilities in New England and that therefore its interests may be affected by the issues in this proceeding. NEER Petition at 3. NEER also states that it “seeks intervenor status for the purpose of assisting the Commission in ensuring that the proceeding is conducted consistent with New Hampshire law and Commission precedent.” NEER Petition at 5.
- B. Similarly, in its petition for intervention, NEPGA indicates that it represents the owners of more than 80 percent of the generating capacity in New England market and that therefore its interests may be affected by the issues in this proceeding. NEPGA says that its “mission is to support competitive wholesale electricity markets in New England” and that its “members’ substantial interests will be adversely impacted by Eversource’s proposed 20-year Purchase Power Agreement (“PPA”) which, if approved, will directly affect the competitive generation market.” NEPGA Petition to Intervene at 1-2.
- C. NEER is a member of NEPGA.
- D. As a first matter, issues pertaining to the wholesale electric generation market are not matters for this Commission. Rather they are reserved for ISO-New England or the Federal Energy Regulatory Commission (“FERC”). Accordingly, any allegations or justification based upon wholesale power issues provide no basis for intervention here. Further and as noted above, the

Commission has held that a general interest in the subject matter of proceeding is insufficient to entitle a party to intervene pursuant to RSA 541-A:32, 1.

General statements by NEER and NEPGA that the PPA that is the subject of this docket could have an impact on the wholesale power market in New England, and, thus, on them are both factually incorrect and lack the specificity of harm required for intervention under RSA 541-A:32, 1.

- E. As noted earlier, the power that will be delivered to the New England market from HRE will not vary regardless of whether or not the PPA is rejected or approved. Only the stranded cost recovery charge applied to Eversource's New Hampshire retail customers would be affected as a result of the PPA. These facts were made clear in Eversource's October 7, 2015 pleading made in Docket No. DE 14-238 that was quoted in Order No. 25,830, cited above. Eversource further confirmed these facts in the testimony accompanying its Petition, wherein witness James G. Daly testifies, "PSNH's entitlements to the energy and environmental attributes will be sold bilaterally or into the wholesale market, with the net proceeds credited to the Stranded Cost Recovery Charge." Testimony, p. 9. Neither the competitive marketplace in general, nor Eversource's provision of default energy service, will be impacted by the PPA.
- F. At best, NEER's and NEPGA's interests in this proceeding are those of competitors in the energy marketplace. The Commission has very recently stated that "NEPGA's competitive interests are not sufficient to support intervention under RSA 541-A:32, 1". *Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,882 (April 15, 2016) at 4. NEER and NEPGA have only stated speculative general ongoing interests in the subject of this proceeding, and failed to state facts demonstrating any substantial basis for the grant of intervenor status. As NEPGA's competitive interests appear to be the entire basis for its request, and as NEER's interests overlap almost entirely with those of NEPGA, both petitions to intervene should be denied.

14. Petition of CLF

- A. In its petition for intervention, CLF states that, “CLF and its members, including but not limited to members who are Eversource customers and members who will be directly affected by the proposed Northern Pass transmission line and its effects on the electric market, have a strong and direct interest in the outcome of this proceeding and the various issues it implicates.” Like OEP, CLF also notes that it has been a participant in other Commission proceedings.
- B. The issue in this docket relates solely to the PPA; it is not one where “the proposed Northern Pass transmission line and its effects on the electric market” will be debated. Whether or not the Northern Pass project is approved, and the impact of the power that would be transmitted over that transmission facility on the electric market, are not germane to this proceeding. Furthermore, the fact that CLF may have participated in prior proceedings, or that it is presently participating in other proceedings, does not create standing for intervention.⁴ To intervene here, CLF must show that it has some particular substantial interest, right, or duty at stake in this proceeding and it has failed to do so.
- C. CLF is an environmental advocacy group. CLF itself, as well as the Commission, recognized this as early as 1981 during Docket No. DE 80-182, one of the early dockets held to implement the standards set forth in the Public Utility Regulatory Policies Act of 1978 (“PURPA”). In that proceeding, the Commission was considering rules for funding consumer representation in Commission proceedings. CLF requested that the Commission include “environmental” interests in addition to “consumer interests.” That change was rejected. *Re Compensation to Intervenors In Electric Rate-making*

⁴ Indeed, as noted above, the Commission has recently rejected requests for intervention by other New Hampshire utilities that perpetually appear before the Commission on innumerable issues on the basis that they had not shown an interest specific to that proceeding. *PNE Energy Supply, LLC, et al. v. PSNH d/b/a Eversource Energy*, Order No. 25,881 (April 8, 2016) in Docket No. DE 15-491 at 4. Prior participation does not, and should not, form the basis for the grant of a request to intervene.

Proceedings, 66 NH PUC 332 (1981). The Commission clearly recognized that CLF represents “environmental” interests; it is not a consumer ombudsman.


- D. CLF has failed to note any rights, duties, privileges, immunities or other substantial interests that may be affected by the proceeding. Nor does it cite to any statutory right to intervene. Therefore, its petition should be denied.

14. Although the Petitioners may be interested in this proceeding, they have not met the standards of RSA 541-A:32 to warrant the grant of intervenor status. “It should be recognized 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.” *Re North Atlantic Energy Corporation*, 87 NHPUC 455, 456 (2002). “Merely expressing a concern about a relevant issue, no matter how well-intentioned, does not confer party status.” *Id.* None of the Petitioners have demonstrated that they have any substantial interests actually at stake in this proceeding. Moreover, none of them have actually demonstrated that the “interests of justice” justify their participation. Hence, the Petitioners’ requests for intervention should be denied.

15. Pursuant to RSA 541-A:32, III, and Puc 203.17, the Commission may limit an intervention to, among other things, “designated issues in which the intervenor has a particular interest.” While Eversource objects to the above interventions as described above, to the extent the Commission may conclude that one or more of the Petitioners should be permitted to intervene, Eversource hereby requests that the Commission limit intervention to the issues in which that intervenor may have a particular interest and which are actually relevant to this proceeding. Such a ruling should specifically exclude any considerations relating to the siting and construction of the Northern Pass line, and any other matters that do not bear upon the PPA that is before the Commission. Furthermore, any such grants of intervenor status should be limited to the first phase of this proceeding as defined in the Order of Notice, unless a Petitioner represents customers’ economic interests.

Respectfully submitted this 4th day of November, 2016.

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY**

By:  _____

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CERTIFICATE OF SERVICE

I certify that on this date I caused this pleading to be served to parties
on the Commission's service list for this docket.

November 4, 2016