

THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Investigation of Merrimack Station Scrubber Project and Cost Recovery

Docket No. DE 11-250

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE’S OBJECTION TO  
PETITIONS TO INTERVENE OF TRANSCANADA POWER MARKETING LTD. AND  
TRANSCANADA HYDRO NORTHEAST, INC., AND NEW ENGLAND POWER  
GENERATORS ASSOCIATION, INC.**

Pursuant to RSA 541-A:32, N.H. Code of Admin Rule Puc 203.17, and the Order of Notice issued in this proceeding, Public Service Company of New Hampshire (“PSNH” or the “Company”) hereby objects to the Petitions to Intervene (“Petitions”) filed in this proceeding by TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (collectively, “TransCanada”) and New England Power Generators Association, Inc. (“NEPGA”) (collectively, the “Petitioners”). The Petitioners, participants in the competitive energy market, do not meet the standards of RSA 541-A:32 to be granted intervenor status. In support of this Objection, PSNH states as follows:

1. In 2006, the General Court enacted 2006 N.H. Laws Chapter 105, “An Act Relative to the Reduction of Mercury Emissions” (codified at RSA 125-0:11, et seq.) “to achieve significant reductions in mercury emissions at the coal-burning electric power plants in the state as soon as possible.” RSA 125-0:11, I. *See Appeal of Stonyfield Farm, Inc.*, 159 N.H. 227, 228 (2009).

2. “To accomplish this objective, the legislation specifically requires PSNH to install

‘the best known commercially available technology . . . at Merrimack Station,’ which the New Hampshire Department of Environmental Services (DES) has determined is the scrubber technology. DES has determined that this technology ‘best balances the procurement, installation, operation and plant efficiency costs with the projected reductions in mercury and other pollutants from the flue gas streams of Merrimack [Station].’ According to the legislature, installing the scrubber technology ‘is in the public interest of the citizens of New Hampshire and the customers of [PSNH].’ *Stonyfield* at 228-9.

3. The Commission opened its Docket No. DE 08-103, “Investigation of PSNH’s Installation of Scrubber Technology,” to inquire into the status of PSNH’s efforts to comply with the mercury reduction law, and as a repository for materials to be filed by PSNH. *See* Secretarial Letter dated August 22, 2008, Docket No. DE 08-103.

4. On November 10, 2011, PSNH filed a Progress Report concerning the Clean Air Project at Merrimack Station (the “Scrubber Project” or “Project”) with the Commission in Docket No. DE 08-103. In that Progress Report, PSNH informed the Commission of the successful early commissioning, start-up, and operation of the Project, with an official in-service date for the Scrubber of September 28, 2011.

5. PSNH filed an Addendum to that Progress Report dated November 18, 2011. The Addendum noted that “with both Units 1 and 2 on-line the Scrubber is achieving initial SO<sub>2</sub> reductions of 90% or better.” As of the date of the Addendum, PSNH has placed a total of \$359.1 million of Clean Air Project costs in-service.

6. On November 15, 2011, the Commission issued a Secretarial letter in Docket Nos. DE 11-215 and 11-216 announcing its determination that it would open a separate docket in which to consider the in-service status, PSNH’s prudence, the appropriate rate treatment and the

costs of the Scrubber Project in light of the Company's October 14, 2011 testimony of Robert A. Baumann and William H. Smagula.

7. On December 1, 2011, the Commission issued an Order of Notice establishing this proceeding (Docket No. DE 11-250, "Investigation of Merrimack Station Scrubber Project and Cost Recovery") to consider, *inter alia*, "whether the costs of the Scrubber Project were prudently incurred consistent with the requirements of RSA 125-O:11 et seq. and are eligible for recovery through default service rates as provided by RSA 125-O:18; whether temporary rates pursuant to RSA 378:27 are appropriate for recovery of any costs associated with the Scrubber Project; and whether the resulting rates are just and reasonable pursuant to RSA 378:5 and 8."

8. The Order of Notice required "any party seeking to intervene in the proceeding [to] submit ... a Petition to Intervene ... on or before December 8, 2011, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Code Admin. Rule Puc 203.17 and RSA 541-A:32,I(b)."

9. On December 8, 2011, the Petitioners both submitted Petitions to Intervene in this proceeding.

10. In its Petition, TransCanada states:

TransCanada Hydro Northeast Inc. purchased certain hydroelectric facilities on the Connecticut and Deerfield Rivers from US Gen New England, Inc. in April of 2005. TransCanada and its affiliates are involved in the transportation of natural gas and the power generation business in North America. TransCanada and its affiliates collectively own approximately 567 MW of hydroelectric generation capacity on the Connecticut and Deerfield rivers, with the bulk of it being in New Hampshire. TransCanada Power Marketing Ltd. is a competitive supplier of electricity registered to do business in New Hampshire.

TransCanada Petition at para. 3. In an attempt to meet the statutory requirements for intervention, as set forth in the Order of Notice, TransCanada goes on to state:

TransCanada's rights, duties, privileges or substantial interests as a competitive supplier of electricity in New Hampshire and as a producer of electricity that is sold into the New England ISO market, as well as other rights, duties, privileges or substantial interests of TransCanada and its affiliates, may be affected by the proceeding given the scope of the issues identified in the Order of Notice. TransCanada's competitive position relative to PSNH may be harmed depending on the results of this docket. TransCanada's rights and interests as a competitive supplier and as a participant in the market for electricity in New England may be affected by the Commission's decision with regard to PSNH's recovery of the Scrubber Project costs and some of the other issues raised and addressed in this proceeding. TransCanada believes it must intervene in this proceeding to protect these rights.

TransCanada Petition at para. 4.

11. Similarly, in its Petition, NEPGA states:

NEPGA is the largest trade association representing competitive electric generating companies in New England whose mission is to enhance economic development and employment through sound energy and environmental determinations. NEPGA's member companies produce approximately 27,000 megawatts of generating capacity in the region, with more than 2,600 megawatts represented by New Hampshire member companies. NEPGA's members sell their energy and capacity into the New England wholesale power markets administered by ISO-New England - the same markets from which PSNH purchases power to supplement its own generation resources, including Merrimack Station. NEPGA members also have experience in installation and financing of pollution control equipment on electrical generation facilities.

NEPGA Petition at para. 4. In an attempt to meet the statutory requirements for intervention, as set forth in the Order of Notice, NEPGA goes on to state:

As a representative of a substantial market share within the regional energy market and as a representative of New Hampshire companies that must compete within that market, NEPGA's interests will likely be affected by this proceeding. Given the broad scope of the cost recovery and ratemaking issues raised in the Order of Notice, there is the potential for direct and possibly adverse economic impact upon NEPGA and its member companies as a result of Commission orders issued in this

proceeding. No other party can represent NEPGA's broad interests or the rights and interests of NEPGA's member companies as a group. Thus, NEPGA has a substantial and direct interest in consideration and resolution of cost recovery and other issues related to the Scrubber Project and these interests cannot be adequately represented by any other party to the proceeding.

NEPGA Petition at para. 5.

12. The Petitioners' requests for intervention should be denied, as they fail to state facts demonstrating how their rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Code Admin. Rule Puc 203.17 and RSA 541-A:32,I(b).

13. As noted in the Order of Notice, the purpose of this proceeding is to investigate "whether the costs of the Scrubber Project were prudently incurred consistent with the Requirements of RSA 125-O:11 *et seq.* and are eligible for recovery through default service rates as provided by RSA 125-O:18; whether temporary rates pursuant to RSA 378:27 are appropriate for recovery of any costs associated with the Scrubber Project; and whether the resulting rates are just and reasonable pursuant to RSA 378:5 and 8." The Petitioners' interests are those of competitive suppliers in the energy marketplace. The scope of issues in this proceeding is not of a nature that involves the "rights, duties, privileges, immunities or other substantial interest" of any competitive suppliers. Rather, the issues at hand relate to whether the costs of the scrubber were prudently incurred and eligible for recovery through the Company's default service rate.

14. The Clean Air Project was mandated by law. The installation of "'Scrubber technology," meaning "a wet flue gas desulphurization system" at Merrimack Station was expressly required by statute. The law now mandates that the Commission shall approve a manner for PSNH to "to recover all prudent costs of complying with the requirements" of the scrubber law, and that "such costs shall be recovered via the utility's default service charge."

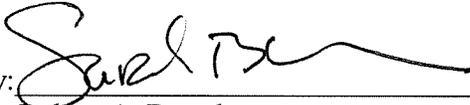
15. Neither TransCanada nor NEPGA have demonstrated how their “rights, duties, privileges, immunities or other substantial interest” are at issue in this proceeding. Instead, they make conclusory statements unsupported by factual allegations regarding how their interests will actually be affected by this docket.

16. Although the Petitioners may have an interest in this proceeding, they have not met the standards of RSA 541-A:32 to warrant the grant of intervenor status “[i]t 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.* As a result, the Petitioners’ requests for intervention should be denied.

17. For these reasons, the Company respectfully requests that the Commission deny the TransCanada and NEPGA petitions to intervene. In the event that the Commission grants the petitions to intervene, the Company requests that the Commission, pursuant to RSA 541-A:32,III(c), require TransCanada and NEPGA to combine their presentations of evidence and argument, cross-examination and participation in discovery in this docket given the commonality of their interests.

Respectfully submitted this 13<sup>th</sup> day of December, 2011.

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

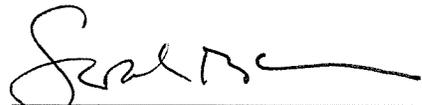
By: 

Robert A. Bersak  
Assistant Secretary and Assistant General Counsel  
780 N. Commercial Street  
Manchester, NH 03101-1134  
603-634-3355  
Bersara@PSNH.com

Sarah B. Knowlton  
Senior Counsel  
Public Service Company of New Hampshire  
780 N. Commercial Street  
Manchester, NH 03101-1134  
603-634-2326  
[knowlsb@nu.com](mailto:knowlsb@nu.com)

Certificate of Service

I hereby certify that a copy of this Objection to Petitions to Intervene has been served electronically on the persons on the Commission's service list in accordance with Puc 203.11 this 13<sup>th</sup> day of December, 2011.



Sarah B. Knowlton