

DE 02-075

**NORTH ATLANTIC ENERGY CORPORATION,
THE UNITED ILLUMINATING COMPANY,
NEW ENGLAND POWER COMPANY,
NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC.
AND
CANAL ELECTRIC COMPANY**

Proceeding to Approve the Sale of Seabrook Station Interests

Order Denying Rehearing

O R D E R N O. 24,007

July 8, 2002

On May 31, 2002, the Commission issued Order No. 23,981, a procedural order, in Docket No. DE 02-075, which concerns the proposed sale of the Seabrook Nuclear Power Station. Among other things, the Commission denied the intervention request of the Aziscoos Lake Campers Association (Aziscoos Lake). The Commission noted that Aziscoos Lake had "not established a sufficient basis for full party intervenor status." Furthermore, the Commission pointed out that the environmental issues raised by Aziscoos Lake "will be adequately represented by other parties to the proceeding."

On June 18, 2002, Aziscoos Lake filed a letter with the Commission asking that the letter be treated as a motion for reconsideration and reasserting the request for intervention. An objection to rehearing was filed by Public

Service Company of New Hampshire on June 20, 2002, which, among other things, contended that Aziscoos Lake did not set forth any good reason for rehearing and that its request suffered from several procedural infirmities. Finally, on June 26, 2002, Attorney Robert Backus filed, on behalf of Aziscoos Lake, a memorandum in support of the request for rehearing.

In its letter, Aziscoos Lake explains that it seeks "to raise the prospect that [its] experience reveals that FPL has done significant environmental damage." In essence, it contends that FPL Group's environmental record should be considered as part of the review of the Seabrook sale. In his memorandum, Mr. Backus notes that the co-chairs of Aziscoos Lake are New Hampshire residents. (Technically, it appears that the individuals referred to by counsel are actually co-chairs of the Lake Preservation Committee, a sub-unit of the Aziscoos Lake Campers Association.) He also argues that the issues raised by Aziscoos Lake are relevant and that environmental concerns were not raised by any other party.

Aziscoos Lake confuses the legal standard for granting intervention of a party with the legal standard for determining the relevance of an issue raised in a particular proceeding. RSA 541-A:32, I, provides for intervention when a

party can demonstrate that its "rights, duties, privileges, immunities or other substantial interests may be affected." When a prospective party cannot make such a showing, RSA 541-A:32, II, allows the Commission to grant intervention when it "would be in the interests of justice".

Aziscoos Lake has expressed an interest in this proceeding but, while environmental compliance issues may be relevant, Aziscoos Lake has not demonstrated a basis for its becoming a party. Aziscoos Lake, an association of camp owners in Maine, has not set forth a right, a duty, a privilege, an immunity or any substantial interest that may be affected by this proceeding. The matter before the Commission in this case is whether to approve the sale of a nuclear generating facility in Seabrook, New Hampshire. 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. Aziscoos Lake has a concern about the proceeding, but it does not have a legal nexus to the outcome of our decision whether or not to approve the sale. Accordingly, Aziscoos Lake does not qualify as a party pursuant to RSA 541-A:32, I.

In his memorandum, Mr. Backus infers from Order No. 23,981 that the intervention of Aziscoos Lake was rejected

"based on a finding that another party can pursue an issue of concern to a group seeking intervention." Counsel misconstrues the Commission's decision. Aziscoos Lake has been denied intervention of right because it has failed to show any legally cognizable interest in this proceeding. The Commission, however, has the discretion to allow intervention where it "would be in the interests of justice". RSA 541-A:32,II. Here there is no need to permit intervention in order for justice to be served. As we stated in Order No. 23,981, environmental issues are being represented adequately by other parties to the docket. Thus, no basis has been presented for the Commission to exercise its permissive authority regarding intervention with regard to Aziscoos Lake.

It should be noted in this regard that counsel is mistaken when he recites that no other party has raised environmental issues. In fact, at the prehearing conference on May 7, 2002, Mr. Backus himself raised the issue of FPL Group's environmental record, which Aziscoos Lake subsequently seconded, and CLF raised the same concerns in its Petition to Intervene filed on May 17, 2002. Specifically, Mr. Backus stated that the Campaign for Ratepayers Rights "would be interested in having addressed the record of the purchaser, in

terms of environmental compliance, both with its FERC licenses for the hydro facility it operates in New England and its plant in Florida." Tr. 5/7/02, p.23.

Merely expressing a concern about a relevant issue, no matter how well-intentioned, does not confer party status.

Accordingly, we deny Aziscoos Lake's motion for rehearing. As a non-party, it may not conduct discovery, present witnesses or cross-examine witnesses. Nevertheless, it may provide a public statement at the hearing explaining its substantive position.

Based upon the foregoing, it is hereby

ORDERED, that the Aziscoos Lake motion for rehearing is DENIED. I

Comment: Type remainder of order here.

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary