

DE 04-113

**HEMPHILL POWER & LIGHT COMPANY
DURGIN & CROWELL LUMBER COMPANY**

Petition for Declaratory Judgment

Order Nisi Granting Petition

ORDER NO. 24,352

July 16, 2004

Petitioners Hemphill Power & Light Company (Hemphill) and Durgin & Crowell Lumber Company (Durgin & Crowell) seek a declaratory judgment from the New Hampshire Public Utilities Commission (Commission) determining that an electric interconnection project contemplated by the petitioners for construction in the fall of 2004 will not (1) subject either petitioner to regulation as a public utility under New Hampshire law and (2) adversely affect the 20-year rate order, *Hemphill Power and Light Company*, 70 NH PUC 142 (1985) (Rate Order), under which Hemphill sells energy to Public Service Company of New Hampshire (PSNH). The verified petition was filed on June 28, 2004 .

The verified petition makes the following representations: Hemphill operates a 13.8 megawatt biomass generation facility in Springfield that is a “qualified facility” within the meaning of the federal Public Utilities Regulatory Policies Act of 1978 (PURPA). Pursuant to the Rate Order, Hemphill sells up to 13.8 megawatts of energy to PSNH at specified rates. The facility is capable of generating power in excess of 13.8 megawatts as well as steam in excess of that required for electricity generation. Accordingly, Hemphill has entered into an arrangement whereby it will provide electricity and steam to Durgin & Crowell, whose premises are adjacent to those of Hemphill. For this purpose, Durgin & Crowell plans to construct 1,500-foot gas and steam lines to connect it with Hemphill. These lines will traverse only property owned by the

petitioners. Because the majority owners of Durgin & Crowell also own in excess of 25 percent of Hemphill, there is common ownership between the two petitioners. While some of the buildings at the Durgin & Crowell facility receive retail electric service from PSNH, the remaining facilities have been electrically isolated from PSNH for more than 15 years. These non-PSNH-connected facilities require between 1 and 2 megawatts of electricity and are presently served by on-site diesel generation. They also require approximately 40,000 pounds per hour of steam for wood-drying kilns, currently generated by on-site wood- and oil-fired boilers. The interconnection project planned by the petitioners would provide electricity and steam to the non-PSNH-connected facilities, with the existing on-site generation as backup when Hemphill is unable to provide energy via the interconnection project.

Petitioners aver that pursuant to Hemphill's interconnection agreement with PSNH, Hemphill will consult with PSNH concerning (1) protecting PSNH's system, control and metering, and (2) ensuring that no power is transferred between PSNH and the non-PSNH-connected facilities to be served by the interconnection project. The petitioners state that neither PSNH nor the Office of Consumer Advocate object to the granting of their request for declaratory judgment.

The petition for declaratory judgment accurately delineates the relevant legal issues presented by the parties' request. Based on our review of the petition and relevant authority, and recognizing as well that PSNH and the OCA do not object to the relief requested, we conclude that it is proper to grant the request for declaratory judgment. Accordingly, subject to the effective date below, we find that (1) the interconnection and steam project of the petitioners and the provision of electric and steam generation service to be conducted in

connection with that project is a private arrangement; (2) for purposes of RSA 362:2 neither Hemphill nor Durgin & Crowell is by virtue of the interconnection project or the energy transactions associated with the project a public utility, electric company or steam company and is not engaged in, operating as or commencing operations as any of the foregoing; (3) because the interconnection project does not render either Hemphill or Durgin & Crowell a public utility within the meaning of RSA 362:2 neither entity is by virtue of the interconnection project subject to public utility regulation by the Commission of its rates, finances or business organization under the statutes administered by the Commission (including but not limited to RSA 374:22, I and RSA 374:58) for purposes of the interconnection project; and (4) the interconnection project and the provision of electricity and steam in connection with that project by Hemphill to Durgin & Crowell are not in violation of the Rate Order, nor do they make the Rate Order void or voidable.

Based upon the foregoing, it is hereby

ORDERED NISI, that the Hemphill and Durgin & Crowell Petition for Declaratory Judgment is **GRANTED**; and it is

FURTHER ORDERED, that the Petitioners shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than July 26, 2004, and to be documented by affidavit filed with this office on or before August 10, 2004; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than August 2, 2004; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 9, 2004; and it is

FURTHER ORDERED, that this Order Nisi shall be effective August 16, 2004, unless the Petitioners fail to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 2004.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary