

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DM 13-252

ALL UTILITIES

Objections to Public Utility Assessments

Order Addressing Petitions to Intervene and Adopting Procedural Schedule

ORDER NO. 25,600

November 27, 2013

APPEARANCES: Devine Millimet & Branch, PA by Harry N. Malone, Esq. on behalf of Northern New England Telephone Operations LLC and Enhanced Communications of Northern New England, Inc.; Matthew J. Fossum, Esq. on behalf of Public Service Company of New Hampshire; Gary Epler, Esq. on behalf of Until Energy Systems, Inc. and Northern Utilities, Inc.; Mark W. Dean, Esq. on behalf of New Hampshire Electric Cooperative, Inc.; Sarah B. Knowlton, Esq. on behalf of Granite State Electric Company and EnergyNorth Natural Gas, Inc., both d/b/a Liberty Utilities; McLane, Graf, Raulerson & Middleton, PA by Steven V. Camerino, Esq. on behalf of New England Power Company, New England Electric Transmission Corporation and New England Hydro-Transmission Corporation; Bernstein Shur by Christopher G. Aslin, Esq. on behalf of Electricity N.H., LLC d/b/a/ E.N.H. Power; Orr and Reno by Douglas L. Patch, Esq. on behalf of the Retail Energy Supply Association; Susan W. Chamberlin, Esq. for the Office of Consumer Advocate on behalf of residential ratepayers; and David K. Wiesner, Esq. on behalf of Commission Staff.

I. PROCEDURAL HISTORY

On September 6, 2013, Northern New England Telephone Operations LLC (FairPoint) and Enhanced Communications of Northern New England, Inc. (Enhanced Communications) filed an objection to their fiscal year 2013 public utility assessments issued by the Commission pursuant to RSA 363-A. On September 9, 2013, Public Service Company of New Hampshire (PSNH) filed an objection to its public utility assessment asking for relief “in the event that any other changes to the assessment method are made as a result of any other objections.” PSNH stated that it was requesting this relief “to protect its rights in the event the Commission may conclude in response to other potential objections that the assessment structure should be

amended in a manner that results in PSNH, and its customers, being obligated to pay a greater amount.” PSNH Objection at 2-3.¹

The Commission issued an Order of Notice on October 8, 2013 scheduling a prehearing conference for November 14, 2013 and setting a deadline for petitions to intervene of November 8, 2013. On September 23, 2013, the Office of Consumer Advocate (OCA) filed a letter indicating its participation in this docket on behalf of residential ratepayers pursuant to RSA 363:28. Petitions to intervene were filed on behalf of Unitil Energy Systems, Inc. (UES) and Northern Utilities, Inc. (Northern), New Hampshire Electric Cooperative, Inc. (NHEC), Granite State Electric Company and EnergyNorth Natural Gas, Inc., both d/b/a Liberty Utilities (Liberty Utilities), New England Power Company (NEP), New England Electric Transmission Corporation (NEET) and New England Hydro-Transmission Corporation (NE Hydro), and Electricity N.H., LLC d/b/a/ E.N.H. Power (ENH Power). A limited petition to intervene was filed by the Retail Energy Supply Association (RESA). No objection to any of these petitions to intervene was filed.

The prehearing conference was held as scheduled on November 14, 2013, at which FairPoint, Enhanced Communications, PSNH, prospective intervenors, OCA, and Staff participated. No objection to any petition to intervene was raised orally during the prehearing conference and at the close of the hearing the Commission took the pending petitions to intervene under advisement.

¹ PSNH also noted that it, and others, had publicly filed extensive comments on the Commission’s assessment method and process in Docket No. IR 13-038, and PSNH requested that the Commission take administrative notice of that docket and the comments filed therein, pursuant to N.H. Code Admin. Rules Puc 203.27. PSNH Objection at 2. fn. 2.

On November 19, 2013, Staff filed a report of the technical session that followed the prehearing conference and submitted a proposed procedural schedule for the docket, with the agreement of all participants, as follows:

FairPoint/Enhanced Communications Testimony	January 17, 2014
Data Requests	January 31, 2014
Data Request Responses	February 14, 2014
PSNH/Intervenor Testimony	March 7, 2014
Data Requests	March 21, 2014
Data Request Responses	April 4, 2014
Technical Session	April 11, 2014 at 10:00 a.m.
Legal Briefs Due	April 18, 2014
Hearing on Merits	April 30, 2014 at 10:00 a.m.

II. POSITIONS OF PARTIES AND STAFF

A. RESA and ENH

RESA asserted in its limited petition to intervene that its members are active participants in retail competitive markets for electricity, including the New Hampshire retail electric market, and that several RESA member companies are authorized by the Commission to serve residential, commercial and industrial customers in New Hampshire and are presently providing electricity service to New Hampshire customers; as such, RESA's "members have a substantial and specific interest in the issue of whether an assessment fee can or should be imposed on competitive suppliers as PSNH recommends." RESA Limited Petition at 2. RESA indicated that, if the Commission were to state clearly that it does not have the authority to assess competitive electric power suppliers (CEPS) under current law, it would have no need to intervene and would withdraw its petition. RESA Limited Petition at 3.

ENH Power asserted in its petition to intervene that it is a registered CEPS with over 60,000 customers in New Hampshire and a significant quantity of retail electricity sales. ENH Power Petition at 2-3. ENH Power maintained that, to the extent PSNH or other parties advocate

for the inclusion of CEPS in the utility assessment process, and “to the extent that the Commission has the authority to grant any such request given the current state of the law, ENH Power may be directly impacted by the outcome of this docket.” ENH Power Petition at 3. During the prehearing conference, counsel for ENH Power agreed with counsel for RESA that the assessment of CEPS under current law should not be at issue in this docket.

B. Staff

Staff has not objected to any of the petitions to intervene, including those filed by RESA and ENH Power. Staff counsel stated during the prehearing conference that Staff does not intend to argue that the Commission has the authority to assess CEPS under RSA 363-A as currently in effect. This position was reiterated in Staff’s report letter dated November 19, 2013.

III. COMMISSION ANALYSIS

The Commission considers petitions to intervene in accordance with the standards of RSA 541-A:32. *See* N.H. Code Admin. Rules Puc 203.17. The Commission reviews the facts alleged in the petition and determines whether the petition has demonstrated “rights, duties, privileges, immunities or other substantial interests [that] may be affected by the proceeding . . .” RSA 541-A:32, I(b). If it finds that the petition meets this test, and that the intervention would not impair the orderly and prompt conduct of the proceeding, then the Commission grants intervention. RSA 541-A:32, I(c).

UES, Northern, NHEC, Liberty Utilities, NEP, NEET and NE Hydro are all public utilities under RSA 362:2 and are subject to assessment by the Commission under RSA 363-A. These utilities have substantial interests that may be affected by this proceeding and we will grant their petitions to intervene.

We conclude that RESA members and ENH Power are not subject to assessment by the Commission under RSA 363-A, as currently in effect, to the extent they are registered CEPS because, under RSA 374-F:7, I, CEPS are “not public utilities pursuant to RSA 362:2” and only public utilities are assessed under RSA 363-A. We find that neither RESA nor ENH Power has rights, duties, privileges, immunities or other substantial interests that may be affected by this proceeding, because these two petitioners are not subject to assessment under current law and this proceeding addresses only assessments for fiscal year 2013. We will therefore deny their petitions to intervene.²

PSNH has requested that the Commission take administrative notice of Docket No. IR 13-038, and the comments filed therein, pursuant to N.H. Code Admin. Rules Puc 203.27. We are not convinced that all of the comments and other materials filed in this other docket are properly considered part of the record in this more limited proceeding; however, should parties wish to attach written comments and other materials submitted in IR 13-038 to pre-filed testimony in this proceeding, we believe this is a reasonable and appropriate approach. Therefore we decline to take administrative notice of Docket No. IR 13-038.

We have determined that the proposed procedural schedule for this proceeding is in the public interest, and therefore will approve it.

Based upon the foregoing, it is hereby

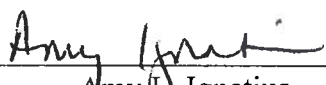
ORDERED, that the petitions to intervene filed by UES, Northern, NHEC, Liberty Utilities, NEP, NEET and NE Hydro are hereby GRANTED; and it is

² We note that our denial of intervention in this docket does not affect the rights of RESA or ENH Power to participate in Docket No. IR 13-038 or in any meetings with Staff related to pending legislation to address the Commission’s assessments under RSA 363-A. These initiatives are forward-looking and are not limited to consideration of the fiscal year 2013 assessment, as is the case in the instant docket.

FURTHER ORDERED, that the petitions to intervene filed by RESA and ENH Power are hereby DENIED; and it is

FURTHER ORDERED, that the procedural schedule proposed by Staff on November 19, 2013 is hereby APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of November, 2013.



Amy U. Ignatius
Chairman




Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director