

**STATE OF NEW HAMPSHIRE**  
**SITE EVALUATION COMMITTEE**

**SEC DOCKET NO. 2015-06**

**JOINT APPLICATION OF NORTHERN PASS TRANSMISSION LLC &  
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
D/B/A EVERSOURCE ENERGY  
FOR A CERTIFICATE OF SITE AND FACILITY**

**APPLICANTS' OBJECTION TO NEW ENGLAND POWER GENERATORS  
ASSOCIATION'S PETITION FOR INTERVENTION**

Northern Pass Transmission LLC (“NPT”) and Public Service Company of New Hampshire d/b/a Eversource Energy (the “Applicants”), by and through their attorneys, McLane Middleton, Professional Association, hereby object to the Petition for Limited Intervention filed by New England Power Generators Association’s (“NEPGA”) dated February 4, 2016. As grounds for this Objection, the Applicants state as follows:

1. NEPGA seeks mandatory intervention under RSA 541-A: 32, I or discretionary intervention under RSA 541-A: 32, II to address three issues allegedly before the Site Evaluation Committee (“SEC”):

(1) the implications for the application of the affiliate relationship between Eversource Energy and, NPT, and the potential for any undue benefit that may arise therefrom;

(2) impacts to the competitive electricity markets, including but not limited to, competitive procurement practices and the potential purchase power agreements; and

(3) any proposed “public interest” stated by the project. *See generally* RSA 162-H:1 (West Supp. 2015); N.H. Code of Admin. Rules Site 301.16 ((a)-(j)).

NEPGA Petition at ¶ 4. Based on its Motion, NEPGA is not entitled to intervention as of right, or as a matter of discretion to address these issues.

2. Although claiming to seek only “limited” intervention, by citing to the RSA 162-H:1 “Declaration of Purpose” section of the statute, and to the general criteria for determining the “public interest” in the SEC Rules (Site 301.16), NEPGA’s proposed intervention is far from limited. Rather, it is plain that NEPGA seeks to be involved in all aspects of this proceeding. Indeed, NEPGA requests that “if, during the course of the proceeding, additional issues arise that affect” the rights and duties of NEPGA members, “it be permitted to seek full party intervention status.” Applicants submit that the SEC should deny such a request as premature. If NEPGA could, in fact, establish the right to intervention at some future point, it should be required to justify its basis for a broader intervention at that point. NEPGA should not be given a free pass to future intervention without establishing the basis for it.

3. NEPGA’s Petition should be denied. First, NEPGA has not specifically identified any “rights, duties, privileges...or other substantial interests” that may be affected by this proceeding and thus does not warrant intervention as a matter of right. Instead, it provides only generalized statements about its interest in competitive markets. But this general interest in the “competitive markets” does not establish “rights, duties and substantial interests” that mandate intervention or rights that merit discretionary intervention. Second, neither subsection of RSA 541-A: 32 warrants intervention to address the specific subjects on which NEPGA seeks to intervene. The issues identified are not before this Committee but rather – if relevant to the interests of NEPGA at all – are more properly addressed at a future date before the Public Utilities Commission. Third, the Committee should deny NEPGA discretionary intervention. Allowing competitors to intervene in this proceeding may substantially impair its orderly conduct. Competitive generators like those represented by NEPGA have a strong interest in stopping any additional supply of energy in the New England region and thus, their real interest

is in preventing, rather than fostering competition. Moreover, they have a strong interest in acquiring competitive information about the Applicants through discovery once they obtain the status of an intervenor. Likewise, competitive generators have a distinct interest in delaying the proceeding in the hope that delay will harm the project. Recent experience before the PUC with NEPGA specifically, and other competitors more generally, demonstrates why the Committee should deny NEPGA's request to intervene. Finally, any interest that NEPGA may have in this proceeding can be addressed without intervention. If NEPGA has information that may be of assistance to the Committee, it can provide that information by memoranda or letters without becoming a party to the proceeding.

**NEPGA Has Failed to Identify Any Rights  
That Would Require Intervention Pursuant to RSA 541-A:32, I**

4. NEPGA contends that its interest in this proceeding is as a “trade association presenting [sic] competitive electric generating companies in New England,” that its “mission is to promote sound energy policies,” that it “believes that sustainable competitive markets are the best means to provide long-term reliable and affordable supplies of electricity for consumers,” and that its members “have a substantial and specific interest in a fully competitive generation market and maintaining a level playing field in that market.” Petition at ¶ 5. In sum, NEPGA's only interest is as an association representing companies that allegedly compete with the Applicants. Its real interest is in protecting its members from competition, as opposed to fostering greater competition. While power generators may not wish to see additional power brought to New England, that concern is not a sufficient basis to intervene before this Committee.

5. NEPGA cites to its intervention in several PUC dockets in support of its intervention here. Yet in each of the PUC Dockets cited by NEPGA, it was either granted

intervention on a discretionary basis (Dockets DE 14-238 and DE 10-195) or because no party to the docket objected (Dockets DE 10-160 and DE10-261). In each of those dockets, NEPGA advanced the same general interests it puts forward for intervention here, but as the PUC stated in Order No.25,733 in Docket 14-238 (Determination Regarding PSNH's Generation Assets) these interests "are not sufficiently direct to support mandatory intervention." Order at 12.<sup>1</sup> If anything, NEPGA's interest in Docket DE 14-238 was greater than its interest here, since that Docket involved generation assets. Yet the PUC, while permitting discretionary intervention, concluded that NEPGA's general interest in the electricity market did not demonstrate that, as required by RSA 541-A:32, I, any of its "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." *Id. See also* Order No. 25,715 in DE 14-211 in which the PUC denied a motion for intervention stating "a general interest in competitive markets or in a bidding process that has not occurred is insufficient to entitle these parties to intervene pursuant to RSA 541-A: 32, I." Order 25,715 at 3.

6. Likewise, in this proceeding, NEPGA asserts only a generalized interest in a "level playing field" and in "ensuring that Eversource Energy's competitive electric affiliate Northern Pass Transmission, LLC...is not unfairly advantaged to the detriment of other non-affiliated companies operating in the region as prohibited by...Puc Chapter 2100." Petition at

¶ 7. NEPGA offers nothing in the way of specific facts that would explain why this proceeding

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<sup>1</sup> NEPGA's statement of interest in Docket 14-238 was nearly identical to the interest it claims in this proceeding: "NEPGA is a trade association representing competitive electric generation companies in New England. NEPGA's member companies represent approximately 26,000 megawatts (MW) of generating capacity in the region with more than 2,600 megawatts represented by New Hampshire member companies. Its mission is to promote sound energy policies to further economic development, jobs and balanced environmental policy. NEPGA believes that sustainable competitive markets are the best means to provide long-term reliable and affordable supplies of electricity for consumers. NEPGA's member companies have been involved with the design and development of competitive wholesale electricity markets and sell their energy and capacity into the New England wholesale power markets administered by ISO-New England. As participants in the region's wholesale power markets, NEPGA's members have a substantial and specific interest in a fully competitive generation market and a level playing field."

affects its members. Accordingly, if intervention is allowed in this proceeding, it must be discretionary, and on the basis that the “interests of justice” support NEPGA’s involvement. But NEPGA has failed to demonstrate any reason why the interests of justice compel intervention.

**The Issues Identified by NEPGA Do Not Support  
Intervention Even on a Discretionary Basis**

7. None of the issues that NEPGA contends it will address if allowed to intervene justify its intervention.<sup>2</sup> As the New Hampshire Supreme Court has stated, a party seeking intervention pursuant to RSA 541-A: 32 must submit a petition that *specifically asserts that its rights and interests* may be affected by the proceeding.” *Appeal of New Hampshire Right to Life*, 166 N.H. 308, 313 (2014) (emphasis in original). While NEPGA has stated that its rights are impacted by this proceeding, it offers nothing about how the proceeding will affect those interests. For example, why does the affiliate relationship between Eversource and NPT affect its members and how? How specifically does this proceeding impact the competitive electricity market and in what way does approval by the SEC impact NEPGA’s members? What specific interest do NEPGA’s members have in “competitive procurement practices” and how, if at all does this Committee’s review of the Application impact those practices, which are squarely within the jurisdiction of the PUC? NEPGA leaves this Committee to guess at each of those matters and to take it at its word that the general interests of its members in competition are sufficient to justify its involvement in this matter. The statute and applicable rules require more.

8. In addition to these defects, NEPGA’s intervention should be denied because the matters it seeks to address in this Petition are not the subject of this proceeding. First, NEPGA contends that this Committee will address the affiliate relationship between Eversource and NPT.

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<sup>2</sup> NEPGA’s claimed interests are only generalized statements and in any event, involve matters beyond the jurisdiction of this Committee.

But this proceeding has nothing to do with the affiliate relationship between the Applicants. Instead, it deals with the siting of the facility.<sup>3</sup>

9. Second, the alleged impact on the “competitive energy markets” that NEPGA seeks to address are said to include (but not be limited to) “competitive procurement practices and the potential purchase power agreements” that will result if the Application is approved. But procurement practices in the construction of the NPT Project and purchase power agreements are not matters for this Committee but rather, for the PUC in potential future proceedings. Again, if NEPGA has an interest in those proceedings it can seek to intervene at that time.<sup>4</sup>

10. Third, NEPGA’s contention that it should be permitted to intervene because it, or its members, has a general interest in any “proposed ‘public interest’” findings would open the door for intervention to every party who claims to be interested in a proceeding. As the PUC has noted: “[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.*<sup>5</sup> In a similar,

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<sup>3</sup> NEPGA has also sought to intervene in a pending PUC docket (DE 15-464) concerning whether the lease between PSNH and NPT satisfies the “public good” standard in RSA 374:30. NEPGA asserts exactly the same interest in that Docket that it advances here. At a pre-hearing conference before the PUC on February 19, 2016, the Chairman of the PUC questioned why NEPGA needed full intervenor status in that proceeding, as opposed to simply providing information to the Commission where it felt it appropriate to do so.

<sup>4</sup> NEPGA contends that “proceedings currently pending before the PUC have not, and likely will not, provide NEPGA with the opportunity to present a present a full overview of the substantive issues impacting its members as that presented in the instant proceeding” because NEPGA was denied discovery in a docket involving “a purchase power agreement announced by Eversource related to the NPT project.” Petition at ¶11, citing Order No. 25,830 (October 23, 2015) in Docket 14-238. That docket involved the Settlement Agreement relating to the possible divestiture of PSNH’s generating assets. NEPGA sought discovery concerning an alleged purchase power agreement between Eversource and Hydro-Quebec. The PUC denied NEPGA’s motion for discovery because the PPA had not been finalized, noting: “If and when Eversource files an agreement with Hydro-Quebec, parties will be free to argue whether, and the extent to which, that agreement affects the settlement agreement.” Order at 4. Thus, NEPGA was denied discovery only because its motion was premature, just as its claim that it should be permitted to address future PPAs is premature here, and irrelevant to this Committee’s work.

<sup>5</sup> While standards for intervention are admittedly different from standing requirements, *Ruel v. New Hampshire Real Estate Appraiser Board*, 163 N.H. 34, 40-41 (2011), the New Hampshire Supreme Court has made it clear that

and very recent circumstance, Northern Utilities, Inc. (“Northern”) sought to intervene in a docket relating to a petition by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty”) to expand its gas franchise. *See generally* Docket No. DG 15-362. In its petition to intervene, Northern contended that its intervention was justified, in part, because it would be affected by any policy decisions made by the Commission in Liberty’s case. The Commission denied the petition, noting that it could not discern a limiting principle in Northern’s petition that would prevent peer companies in New Hampshire, and beyond, from intervening in proceedings because “all Commission rulings regarding such petitions implicate matters of policy of some interest to similarly-situated utilities, and allowing such interventions would result in unwarranted administrative burden.” *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,864 (February 4, 2016) at 3-4. NEPGA has articulated no greater interest in this proceeding, and no limiting principle that would prevent every competitor from intervening in administrative proceedings for the purpose of stifling competition under the guise of creating a “level playing field.”

### **NEPGA’s Intervention May Impair the Orderly Conduct of this Proceeding**

11. Intervention by competitors in proceedings is fraught with particular concerns regarding the conduct of the proceedings. By intervening, an organization such as NEPGA may gain access to highly confidential information through discovery and since the party may have access to all discovery, the Committee cannot protect the confidentiality of that information. This, together with the opportunity for delay is likely NEPGA’s real reason for seeking to

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allegations of increased competition with business are insufficient to provide standing to appeal from an administrative agency decision. *Nautilus of Exeter v. Exeter*, 139 N.H. 450,452 (1995); *Weeks Restaurant Corp. v. City of Dover*, 119 N.H. 541, 545 (1979) (“injury resulting from competition is rarely classified as legal harm but rather is deemed a natural risk in our free enterprise economy.”) Thus, by allowing intervention based on an alleged interest as a competitor, the Committee permits parties to participate who would have no right to appear in Court and no right to challenge the Committee’s decision on appeal. *See e.g. In Re Campaign for Ratepayers’ Rights*, 162 N.H. 245 (2011) (Appeal from SEC order dismissed on standing grounds after a full hearing before the Committee.)

intervene. It has offered no expertise on the relevant issues facing this Committee. Thus, while espousing a right to “fair competition”, intervention provides an opportunity for a competitor to gain access to the very type of information it would otherwise be prohibited from obtaining in the conduct of fair competition.

12. At the same time, by seeking to address only limited issues, a competitor such as NEPGA may argue that the Applicants are not entitled to discovery from it. This is not mere conjecture. In recent proceedings before the PUC involving the recovery of the cost of construction of the flue gas desulphurization technology or “scrubber” at PSNH’s Merrimack Station (Docket DE 11-250), TransCanada Corporation was permitted to intervene and to ask enormous numbers of data requests to PSNH. Yet when the PUC ordered it to produce information sought by PSNH, TransCanada refused to comply with the PUC’s Order. More relevant to this matter, NEPGA was permitted to intervene on a discretionary basis in that same Docket and to obtain extensive information from PSNH. Yet when discovery was filed against it by PSNH, NEPGA withdrew from the proceeding, stating:

NEPGA’s intent as a party to this proceeding was to participate in a more general way as an available resource and to protect NEPGA and its members from any economic impact as a result of Commission Orders issued in this proceeding. Its intent was not to become an active participant in a protracted, heavily litigated process that capriciously required the use of significant resources by NEPGA and its members.

NEPGA Motion to Withdraw Status as Intervenor in Docket DE 11-250 dated February 24, 2014 at ¶ 3. If, as in that Docket, NEPGA’s intent is to act as a “resource” for the Committee, it may do so without intervention by providing information to the Committee through comments. NEPGA’s request to intervene has a substantial likelihood of impairing the prompt resolution of these proceedings, of increasing the volume of discovery and of providing an unfair opportunity for competitors to gain access to confidential information.

13. While the Applicants submit that NEPGA has not presented a sufficient or valid basis for intervention in this matter even on a discretionary basis, if it is permitted to intervene, NEPGA should not be permitted to “have its cake and eat it too” by allowing it to conduct discovery on a broad range of topics while contending that it is not subject to discovery on those same issues. Put simply, either NEPGA’s discovery should be limited to the issues it raises, and it should be subject to discovery on those issues, or it should not be permitted to intervene. If it obtains the status of an intervenor, the Applicants fully intend to seek discovery from NEPGA on relevant matters. Likewise, if NEPGA is permitted to seek discovery on additional issues-as potentially relevant-it should be subject to the same discovery. NEPGA should not be permitted to obtain discovery and then avoid responding to similar discovery by withdrawing at an opportune moment of its choosing.

14. NEPGA offers nothing more than a generalized blanket statement that it has an interest in competition as a basis for its intervention.<sup>6</sup> Because NEPGA has failed to demonstrate the types of substantial, legally protected interests that would entitle it to participate in these proceedings, or to explain why this Committee’s proceedings will address the issues on which it seeks to intervene, its Petition should be denied.

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<sup>6</sup> In another recent proceeding, various entities had sought to intervene based upon nebulous claims that they would provide helpful information, yet later those entities failed to constructively participate in the proceeding. In commenting upon the undefined claims justifying intervention, the Commission Chairman expressed doubt about such “blanket” claims being sufficient by stating: “So, I think it’s something that, in the future, we should perhaps consider testing that assertion when it’s made in the future. I suspect there are some other entities that appear before us regularly who would probably appreciate it if we started considering such blanket statements by intervenors more closely when they make them.” Transcript of Hearing November 30, 2015 Hearing in Docket No. DE 15-068 at 7.

Respectfully submitted,

Northern Pass Transmission LLC and

Public Service Company of New Hampshire d/b/a

Eversource Energy

By Its Attorneys,

McLANE MIDDLETON,  
PROFESSIONAL ASSOCIATION

Dated: February 26, 2016

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Certificate of Service

I hereby certify that on the 26<sup>th</sup> of February, 2016, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.

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Barry Needleman