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September 15, 2014

Ms. Debra Howland
 Executive Director
 New Hampshire Public Utilities Commission
 21 Fruit Street, Suite 10
 Concord, NH 03301-2429

NHPUC 16SEP14AM8:43

**RE: Request for Rulemaking Pursuant to Puc 205.03 of the Rules of the New
 Hampshire Public Utilities Commission
 Docket No. _____**

Dear Ms. Howland:

This request for rulemaking of the above date is submitted pursuant to Puc 205.03 of the rules of the New Hampshire Public Utilities Commission ("Commission"). The Party requesting the rulemaking is:

The New England Power Generators Association ("NEPGA")¹
 141 Tremont Street
 Boston, MA 02111
 (617) 902-2354

NEPGA is represented by Peter W. Brown, Esq. of the law firm of Preti Flaherty Beliveau & Pachios, LLP, 57 North Main Street, P.O. Box 1318, Concord, NH 03302-1318, telephone number 603-410-1518.

A. Interests of the Parties

NEPGA is a trade association that represents electric power generators in New England that sell electric power into the competitive wholesale power markets. Members of the association are referred to as competitive or merchant generation. Their facilities in New England are not subject to cost-of-service regulation and their equity interests in these facilities are fully at risk for cost recovery and profitability. In light of its membership and their interests, NEPGA has a significant interest in assuring the efficiency and integrity of competitive wholesale power markets in New England. The affiliate relationship of the Northern Pass

¹ The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

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Transmission, LLC (“NPT”) and Public Service Company of New Hampshire (“PSNH”) a public utility that is regulated on a cost-of-service basis in furtherance of a transmission project designed to deliver power into New England’s competitive wholesale power markets raises concerns of vital interest to NEPGA.

B. The Reasons for the Proposed Amendments

Since the creation of NPT in December 2008, NPT, the developer of the Northern Pass Transmission project and PSNH, a rate-regulated, rate-based utility, have been affiliates with services and preferences provided by PSNH. The affiliate relationship between these entities has been clear to the public, policymakers, the media and wholesale and retail electricity market participants from the outset, underscored by the ownership structure of NPT. Despite approaching the six-year anniversary of NPT, and the clear fact that it and PSNH are affiliates, no meaningful action has been taken by the Commission to mandate the appropriate separations of two affiliated entities for the benefit of consumers and other market participants operating on what has become a tilted playing-field. This unacceptable situation has caused substantial harm to New Hampshire electricity consumers that have subsidized an affiliated energy company. Most notably, as set forth below, consumers stand to increase the subsidization through the proposed use by NPT of existing PSNH transmission rights of way and the utilization of PSNH personnel for NPT’s project development activities. There is also the troubling issue of a non-bid Power Purchase Agreement (“PPA”) between PSNH and HQ Hydro Renewable Energy, Inc. (“HQ Hydro”) for power from Hydro Quebec delivered over NPT.²

The impacts on competitive electricity markets in New Hampshire and across New England cannot be underestimated. Competitive power generators and other market participants operate under the expectation that a fair and equal opportunity will exist to compete to provide electricity to consumers. When a utility provides clear preferences and benefits to an affiliated energy facility, the fair opportunity to compete in a highly competitive market is swept aside putting at risk the billions of dollars that have already been invested in power plants in New Hampshire and across New England. Such actions also imperil future investments in this pivotal moment for electricity infrastructure development in the region. In this request for a rulemaking, NEPGA highlights the pervasive and ongoing affiliate abuse and proposes amendments to Commission regulations to ensure that Commission rules are as clear as possible so this type of harm does not continue and occur again. The unabated actions taken to-date by NPT and PSNH require immediate action by the Commission.

² PSNH, based on evidence produced to date, intends to enter into a PPA with HQ Hydro. PSNH has stated that its efforts to secure such a PPA will benefit PSNH ratepayers and accordingly activities of PSNH personnel to pursue such a PPA should be borne by PSNH ratepayers. (See p. 6 of this Request). The benefits, if any, to PSNH ratepayers, based on the evidence are speculative at best. It appears that PSNH will not go to bid and assess the benefits of any PPA with HQ Hydro to its ratepayers against the market and unbeknownst to PSNH ratepayers PSNH has used its pursuit of a PPA with HQ Hydro to also tout the project of its affiliate, NPT. Any PPA entered into between PSNH and HQ Hydro, moreover, is bound to benefit NPT in its contract with HQ Hydro. This benefit arises due to the fact that the PPA will presumably include transmission charges that will ultimately be collected by NPT, the PSNH affiliate. Aside and apart from the regulatory changes set forth in this request, the Commission should subject any PPA entered between PSNH and HQ Hydro to careful regulatory scrutiny.

1. The Relationships

Northeast Utilities (“NU”) is a public utility holding company that has as its affiliates PSNH (wholly owned) and NPT (now wholly owned after the NU/NStar merger). NPT has entered into a comprehensive Transmission Service Agreement (“TSA”) with HQ Hydro. HQ Hydro is an affiliate of H.Q. Energy Services, Inc. which in turn is a subsidiary of Hydro Quebec, a crown corporation owned by the Government of Quebec. Another subsidiary of Hydro Quebec is Hydro Quebec TransEnergie which will construct, own and operate the Canadian portion of the line that will enable generation produced in Quebec to be delivered to the Quebec/New Hampshire border. HQ Hydro and H.Q. Energy Services, Inc. are incorporated in the United States and H.Q. Energy Services, Inc. is authorized by the Federal Energy Regulatory Commission (“FERC”) to sell power at market based rates.

New Hampshire law defines the term affiliate as:

“Any person that is . . . controlled by any [public utility] . . .” RSA 366:1(d).

In this regard NU, PSNH and NPT are “affiliates” within the definition of the New Hampshire statutes that regulate relationships among affiliates of public utilities in New Hampshire. PSNH has conceded in correspondence with the Commission that PSNH and NPT are affiliates within the meaning of NH RSA 366:1 (d). Staff Report: November 5, 2013, at p. 8.³

The relationships among NU, NPT, and the HQ entities are described in detail in the TSA that was the subject of FERC review in FERC Docket ER11-2377, Northern Pass Transmission, LLC, 134 FERC ¶61,095, (February 11, 2011). The relationship of the entities and PSNH is described in the TSA only in connection with issues involving transmission upgrades on the AC transmission system of PSNH that will be addressed by ISO-New England in its analysis of the system impacts of interconnecting the Northern Pass transmission line with New England’s bulk power system. The TSA was accepted for filing by FERC, effective February 14, 2011. A subsequent, amended TSA was accepted for filing by FERC, effective January 13, 2014 (Docket No. ER14-597). The amendments to the TSA do not affect the ensuing discussion of the relevant, substantive provisions of the extant TSA.

Pursuant to the TSA, NPT will design, engineer, procure equipment and permits and approvals and construct the line. Support for these expenditures, defined as “Owner’s Costs”, will come in the form of equity contributions from NU (up to 50% of total costs) and construction loans.

Ultimately Owner’s Costs, upon the Commercial Operation Date of the Project, will form the basis of a cost of service/formula transmission rate that will be paid by HQ Hydro for transmission service over a term of forty years, subject to terms and conditions governing earlier termination after the commencement of operations of the Project. It is important to note for

³ References to the Staff Report of November 8, 2013, letters from the Commission’s General Counsel and various representations and filings by PSNH are described in Section B. 2 of this Request.

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purposes of this memorandum that the definition of Owner's Costs includes the following provision:

In no event shall any penalties, damages, fees or other amounts that Owner is required to pay to its Affiliates qualify as "Owner's Costs" unless Owner is liable for such penalties, damages, fees or amounts pursuant to a transaction or other arrangement that is on terms and conditions at least as favorable to Owner, when taken as a whole, as would have been obtained (at the time entered into) in a comparable arm's-length transaction or arrangement with a Person other than an Affiliate of Owner; provided, however, that, if such transaction or arrangement has been accepted or approved by FERC or any other Governmental Authority that specifically reviews the Affiliate relationship in such transaction or arrangement, then such transaction or arrangement shall be deemed to be a comparable arm's-length transaction or arrangement.

This provision is designed to assure that recoverable Owner's Costs when incurred by payments to Affiliates meet the requirements of an arm's length transaction or some form of regulatory approval.

A Management Committee is established consisting of one representative from NPT and one representative of HQ Hydro to supervise progress of the work to complete the Project. There are various early termination provisions, depending on how the project work proceeds with liquidated damages provisions in certain circumstances payable by the parties, one to the other.

Pursuant to the TSA there are two phases of project development. Phase I is the "Development Phase" and Phase II is the "Construction Phase." The Development Phase occurred during the periods of January 1, 2009 through February 14, 2011, the effective date of FERC acceptance of the TSA. The Construction Phase commenced on February 14, 2011 and will continue through the commercial operation date, unless the TSA is terminated earlier.

In the filing by NPT with FERC, a Letter Agreement dated October 4, 2010 was included and for which FERC approval was requested. This letter appears to describe certain "Project Development Costs" that were incurred by NPT prior to approval of the TSA by FERC on February 14, 2011. By its terms this letter agreement never went into effect but it contains statements and charts of development costs incurred prior to the February 14, 2011 effective date and during the Development Phase. Items listed are for legal expenses, environmental, routing analysis and preliminary engineering, real estate services, corporate communications and community outreach, miscellaneous, NPT labor and TSA Negotiation costs. The letter also states the cumulative total of these listed expenses would be \$15,963,700 and of that amount \$7,603,600 was incurred between January 9, 2009 and August 31, 2010.

With respect to expenditures by NPT for the period after February 14, 2011, the Construction Phase, there is only partial information and that is contained in the Staff Report of the Commission, as described below.⁴

2. Arrangements Between Affiliates, NPT and PSNH Regarding the Northern Pass Project

As noted above, the letter appended to the filing by NPT for acceptance of the TSA by FERC contains information concerning substantial expenditures made by NPT during the Development Phase of the Project. It is not known at this writing how these expenditures were incurred and by whom or what contracts or arrangements were made to define the services and costs of services that gave rise to the expenditures. It seems likely, however, given the description of services provided by PSNH to NPT set forth in the Staff Report (see below) that PSNH personnel performed a substantial portion of these services.

Then there is the Staff Report. On November 5, 2013, the staff of the Commission filed a report of investigation with the Executive Director of the Commission.⁵ This report was prepared in response to a series of questions posed in writing to the Commission by Senator Jeanie Forrester. Senator Forrester represents a district that includes Meredith, Center Harbor, Plymouth, and Tilton among a number of other towns. The letter requested staff to determine whether PSNH ratepayers were “fronting” project development costs of \$52 million to date, what the relationship was between NPT and PSNH and whether there was a contract that “spells out the terms” of the relationships and what those terms were, whether the Commission oversees these activities and whether documents and reports are available to the public, who decides when PSNH resources are being improperly used and whether the Commission is monitoring these transactions. In addition to the questions concerning oversight by the Commission, Senator Forrester advised the Commission that PSNH ratepayers had received a bill insert promoting in some detail the Northern Pass Project and asked whether PSNH ratepayers paid for the insert and how ratepayers would know who paid.

In addition to the Staff Report, the Commission’s General Counsel F. Anne Ross, wrote a letter dated September 12, 2013 to Senator Forrester purporting to address three of the questions raised by Senator Forrester in her letters to the Commission, *i.e.* how can PSNH ratepayers be assured that they are not overpaying for resources allocated to NPT; who decides if PSNH resources are being improperly used and is the Commission monitoring PSNH/NPT transactions to assure PSNH ratepayers are being protected.

This combination of Commission staff responses to Senator Forrester’s inquiries, is informative but not dispositive because neither the General Counsel’s letter nor the Staff Report answers Senator Forrester’s questions in their entirety. In the General Counsel’s letter, the General Counsel cited generally to the New Hampshire statutes and Commission regulations

⁴ There are also newspaper reports from newspapers published in Northern New Hampshire indicating land purchases, apparently by a straw entity, of up to \$200,000/acre. Colebrook Chronicle, May 10, 2013, p. 23.

⁵ On July 18, 2014, the Commission opened a Docket IR14-196, Public Service of New Hampshire, “Public Service of New Hampshire and Northern Pass Transmission Affiliate Issues.” As of the date of this Request for Rulemaking, there have been no entries in this docket.

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governing affiliate relationships. The letter further generally explained how the Commission gathered information from the utilities it supervised, and generally described utility cost-of-service ratemaking and how those ratemaking procedures would be addressed in the context of the five-year rate settlement that currently applied to PSNH. The letter stated that the remainder of the Senator's questions would be addressed by the pending staff investigations.

But the Staff Report also leaves unanswered important questions raised by the Senator. To reiterate, Senator Forrester asked whether there was a contract that "spells out" the terms and conditions of the relationship between NPT and PSNH. The Staff Report does not address that question and, further does not discuss the "arrangement" between NPT and PSNH that resulted in NPT reimbursing PSNH for employee costs and other expenses in significant amounts over extended periods of time. The Staff Report merely accounts for the expenditures and how they were booked and how the five-year rate settlement would be affected by booking PSNH employee expenses and related items to NPT cost accounts. The Staff Report states, based on representations made by PSNH, there is "no specific bilateral contract" and makes reference to NU, the holding company's time reporting policy. It is clear from the thrust of the Senator's question that her concern is with the ongoing relationship between NPT and PSNH; *e.g.* what are PSNH's responsibilities to NPT for engineering, design, procurement, public relations, lobbying and other project development activities and is there any place where those responsibilities are spelled out.

Secondarily, the narrow accounting analysis of the Staff Report bears review. For the two calendar quarters reviewed, the Staff Report states that 12 and 15 employees expended 1452 and 1562 hours respectively for each of the quarters reviewed. These employees were from a variety of departments within PSNH, including transmission engineering, real estate, property management and building services. The recorded values for these employees approximate \$285,000 for two calendar quarters (4th quarter 2012 and 2nd quarter 2013). Total booked expenditures for these quarters approximate \$422,000. These numbers appear to indicate a high level of project development activity by PSNH on behalf of NPT. The Staff Report, moreover, states that NPT had the full time equivalent of only 10 employees supporting the evidence that PSNH employees and resources are carrying out the bulk of project development tasks on behalf of NPT.

There are additionally other accounting items involving smaller dollar amounts that also bear analysis. For example, what is the fair market rental of office space for 10 NPT employees in Manchester, New Hampshire? If it is higher than the cost attributed to NPT for use of Energy Park space of PSNH then NPT is receiving a subsidy from PSNH.

There also remains the question of the allocation of the employee costs of Mr. Long, when he was president of PSNH. The Staff Report notes that Mr. Long's employee costs had not been booked at the time the Staff Report was completed. More importantly, PSNH claimed that Mr. Long was working on developing the PPA with HQ Hydro and in that case was performing services exclusively for PSNH. According to PSNH only a portion of Mr. Long's employee costs should be attributed to NPT. This same rationale was utilized to explain how the costs of the bill stuffer that touted the Project were allocated between PSNH and NPT. In this instance since the Project presented the opportunity for a PPA with PSNH, PSNH argued that a portion of

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the cost of the bill stuffer should be attributed to PSNH. The Staff Report noted that the bill stuffer did not disclose this purported benefit to PSNH.

Absent additional information from a staff accounting review or public reports detailing NPT and PSNH expenditures, there are a few and varied pieces of evidence that PSNH activities on behalf of NPT are ongoing. PSNH employees are present at any number of public forums and media events touting Northern Pass. On September 5, 2013, NPT applied for an amended Special Use Permit from the National Forest Service. The application and exhibits were extensive and contained diagrams, tables, and full color aerial photos showing the use of existing PSNH transmission rights-of-way for the Northern Pass Project in the White Mountain National Forest. The application was submitted by Anne Bartoswicz, the then Project Director in the name of NPT with no other engineering or surveyor company indicated on the exhibits. The question is, of course, whether and to what extent PSNH employees assisted in the preparation of that application.

Senator Forrester wrote a third letter to the Commission on June 24, 2014. A response to the Senator's third letter was contained in a letter dated July 18, 2014 from Attorney Ross, the Commission's General Counsel. This letter attached correspondence dated March 17, 2014 submitted to the Commission by PSNH. Attorney Ross' letter stated that there had been no finding of "any violation of applicable standards by PSNH." The material submitted by PSNH on March 17, 2014 that was inadvertently not forwarded to Senator Forrester until July 18, 2014, consists of a statement concerning time reporting by affiliates of Northeast Utilities and a Site Access and Entry Agreement and its amendments authorizing NPT personnel access to PSNH transmission rights-of-way. In the cover letter to this material counsel for PSNH stated PSNH has "no written contracts" with NPT.

Notwithstanding the Staff Report of November 5, 2013 that found, on the basis of a spot review of time sheets, several employees of PSNH provided services at "cost" to NPT, counsel for PSNH stated that centralized services "such as managerial, supervisory, construction, engineering, accounting, purchasing, financial . . . including, marketing, lobbying or legal . . . are provided by employees of Northeast Utilities Service Company ("NUSCO"). NPT does have a service agreement with NUSCO that governs the provision of these services." The Counsel's letter goes on to say a "few services [are] provided to NPT by PSNH employees."

3. It Appears that PSNH Employees Have Been Performing Project Development Services for NPT at Cost to PSNH

Staff in its investigation did not explore the nature and terms of the arrangements between PSNH and NPT but merely reviewed how employee costs and expenses were accounted for. The salient question remains: Is PSNH performing energy project development services for NPT and how extensive are these services? NPT has only 10 full time equivalent employees and the 27 employees of PSNH whom, for two quarters over a span of less than a year, staff identified as having their employee costs reimbursed by NPT appear to have come from sectors within PSNH that would provide energy project development services.

Normally, in connection with a \$1.4 billion project, a developer, not having the staff to perform the services, would contract for project development services with outside consulting

firms or EPC contractors and normally through an RFP process. Any bids in response to an RFP process would include a profit to the bidders to reflect the bidders expected returns on their businesses and their opportunity costs if they were to win the bid.

Based on the Staff Report, NPT is obtaining energy project development services at cost per the accounts of PSNH and NPT is obtaining project development services that are arguably below what it would contract for at arm's length in the market. In short, PSNH ratepayers are being deprived of a gain from providing development services to NPT that in turn would reduce PSNH's revenue requirement. Further, it is not clear whether these services would be available – at cost or otherwise – to any third-party developer. If not, as appears to be the case, this is an impermissible benefit provided to a utility affiliate, which the Commission must address immediately.

As set forth in NH RSA 366:4 the failure to file “arrangements” with the Commission renders the arrangements unenforceable and payments disallowed. New Hampshire case law, moreover, permits the Commission to impute the revenues of an affiliate (NPT) to the public utility, (PSNH) when affiliate abuse has occurred. In re Appeal of Verizon New England, Inc. 153 N.H. 50, 889 A.2d 1027 (2005). Under New Hampshire statutes and case law the measure of what should be paid by NPT to PSNH is straightforward, the cost to NPT of development services procured in the market net of payments to PSNH based on PSNH's cost should equal the payment to PSNH.

To assure compliance with New Hampshire law and provide the transparency called for in connection with the PSNH/NPT relationship, the proposed rulemaking amends Puc 2106.01 to require ongoing, full disclosure and reporting of the arrangements, contracts and business purposes of “Competitive Affiliates” which definition includes “Energy Project Development Affiliates.”

4. **Staff Erred When it Determined that NPT is not a Competitive Affiliate of PSNH Within the Meaning of the Current Regulations of Chapter 2100. NPT is a Competitive Affiliate Within the Meaning of the Current Regulations and the Proposed Regulations Make it Clear that NPT and Similar Energy Project Development Affiliates are Covered by Chapter 2100.**

The analysis in the Staff Report was premised on the tentative determination that NPT is not a “Competitive Affiliate” or “Competitive Energy Affiliate.” If NPT is determined to be a “Competitive Supplier” or “Competitive Energy Supplier” then several provisions of the regulations dealing with affiliates would ban several of the activities of PSNH that have been reported to date.

PUC 2102.03 defines Competitive Affiliate as follows:

“Competitive affiliate” means any affiliate that is engaged in the sale or marketing of products or services on a competitive basis and includes any competitive energy affiliate.

PUC 2102.04 defines Competitive Energy Affiliate as follows:

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“Competitive energy affiliate” means any competitive affiliate that is engaged in the sale or marketing of natural gas, electricity, or energy-related services on a competitive basis.

NPT is marketing services, *i.e.* transmission services, to HQ Hydro and pursuant to provisions of the TSA, would be marketing transmission services in the event there was unused transmission capacity. The TSA and the FERC order accepting the TSA requires NPT to provide such transmission services pursuant to the requirements of Order 890 and to establish an OASIS cite to afford the market access to unused transmission on an open and transparent basis. Northern Pass Transmission, LLC, 134 FERC ¶61,095, P 72 (2011).

There is also the obvious purpose of the Project, to deliver generation to competitive power markets in New England. In this regard HQ Hydro has exclusive use of the capacity of the Project, except in those instances when it does not utilize the full capacity of the line. In short, Northern Pass is no more than a generation lead to supply energy services to the New England market. That one party, NPT, owns the line and HQ Hydro has exclusive use of the line as prescribed by the terms and conditions of the TSA does not take away from the fact that NPT as owner of the line is providing an energy service to competitive markets. As an aside, NPT has stated that operation of the line will be transferred to ISO-New England pursuant to a Transmission Operating Agreement. The fact remains, however, NPT is responsible for maintaining the line after it enters commercial operation and will receive revenues from HQ Hydro for the latter’s exclusive right to use the line. That ISO-New England will operate the line does not change the character or purpose of the Project. Under either of the points discussed above NPT is a Competitive Affiliate; it is marketing transmission service, and a Competitive Energy Affiliate, it is marketing energy, related services (transmission).

In order to set to rest any ambiguity as to the application of the rules to NPT and PSNH concerning “Competitive Affiliates” and “Competitive Energy Affiliate” a new definition is added to the definition of “Competitive Affiliate.” The new definition, “Energy Project Development Affiliate,” makes clear that NPT, which is engaged in the development of an energy transmission project to provide transmission services to New England’s power markets, is a “Competitive Affiliate” of PSNH.

Several provisions of the existing regulations that are directed toward competitive affiliates pertain and would disallow a number activities that have come to light in connection with the PSNH and the NPT relationship to date. See 2103.10 (refrain from speaking on behalf of NPT and, representing any advantage accruing to customers as a result of PSNH dealings with NPT); 2105.02 (shall not share office space, equipment or services); 2105.03 (joint purchases of system operation services prohibited); 2105.04 (shared services of the utility and affiliate shall not create customer confusion); 2105.05 (no joint employment allowed), 2105.07 (no joint advertising allowed or promoting of any service offered by the affiliate). Application of these provisions to the arrangements between NPT and PSNH would not only evidence past violations of regulation but bar future activity by NPT and PSNH. The proposed regulations clarify and add to the proscriptions that should pertain in any relationship between a regulated utility and its energy project development affiliate and in the matter of NPT and PSNH, should pertain to that relationship as well. As will be further explained below revisions to the Commission’s rules

with the added definition of Energy Project Development Affiliate will assure transparency and accountability of the relationship between PSNH and NPT and similar relationships in the future.

5. The Rights of Way, a Major Problem for NPT, PSNH and the Commission

It appears that the Project will utilize existing transmission rights-of-way owned by PSNH for both the DC and AC portions of the line. Access to these rights-of-way is a considerable benefit to NPT. First, new rights-of-way for the entire extent of the line would create more opposition to the line than already exists in considerable measure. Second, the costs would not only be substantial but could be more than substantial given that NPT does not have eminent domain authority under state or federal law. Third, acquisition of the right to use PSNH rights-of-way could be at a price representing a considerable savings to NPT.

Most recently, counsel for PSNH disclosed for the first time the existence of a Site Access and Entry Agreement entered into between PSNH and NPT in 2010 and several amendments to that agreement extending its term through December 31, 2014. In the third "Whereas" clause to the original Agreement it is stated that "NPT has an interest in possibly using by agreement with PSNH the PSNH Real Estate or certain portions thereof, for the routing and siting of its new DC and AC lines."

Appended to the original agreement is a Schedule of Property owned by PSNH and Properties, Inc., the latter being the wholly owned real estate affiliate of PSNH. The Second Amendment to the Agreement of October 26, 2010 adds an additional schedule of properties of PSNH and Properties, Inc.

First, contrary to NH RSA 366:3 the Site Access and Entry Agreement was not disclosed to the Commission until March 17, 2014, four years after it was executed. Second, the Agreement has since been amended several times, the last amendment to extend its term through December 31, 2014. ⁶Third, there is no disclosure by PSNH of what, if any consideration was paid by NPT to PSNH for its access to PSNH property, all of which is in the PSNH rate base for which PSNH earns a return at ratepayer's expense. Normally in arm's length property transactions payment is made by the party who is granted access to the property owner. In PSNH's case payments that should have been made by NPT would have reduced the burden to ratepayers of PSNH's ownership of this property. The Site Access and Entry Agreement, moreover, clearly discloses that NPT is considering using PSNH properties (rights-of-way and easements) to site its AC and DC lines. NPT has been denied eminent domain authority (NH RSA 371 § 1-a, 2, 2-a, 16). Denial of eminent domain authority prevents NPT from condemning property and also prevents NPT from leveraging its condemnation authority to acquire property

⁶ As part of its response to Senator Forrester's letter of August 2, 2013, Commission Staff posed the following question: "Please provide a written description of any agreements or other arrangements between PSNH and Northern Pass providing details of how costs and any reimbursement are accounted for." As stated in the Staff Report of November 5, 2013 PSNH responded: "There are no written agreements between PSNH and Northern Pass responsive to this question. RSA 366.3 does not require a continuing contract or arrangement between a public utility and affiliate." (Staff Report at 7-8, emphasis supplied). In fact there was and is a written agreement, the Site Access and Entry Agreement and its amendments, that were disclosed by PSNH in its March 17, 2014 letter to the Commission some four years after the agreement was reached and continued by numerous amendments up to the present.

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for the siting of its transmission lines. The properties that PSNH has acquired and that NPT is considering using were acquired within a regulatory regime pursuant to which PSNH had eminent domain authority. The proposed rules have a provision directed at this contemplated "end around" of the bar to NPT having eminent domain authority. See Puc 2101.04 (b), Circumvention Prohibited.

Most importantly, the Commission must question an arrangement that allows PSNH to provide limited, valuable right-of-way space that was procured and paid for by its ratepayers for current and future use to any third party, especially an affiliate. The use permitted to NPT or any other affiliate for that matter could force PSNH and its ratepayers in the future to expend the time and expense of obtaining new or expanded rights-of-way in order to site new transmission lines that are needed to provide reliable electric service to ratepayers who have already made this investment; - time and expense that would have been avoided if NPT had not been allowed to use the rights of way.

Whatever the benefits to NPT of use of the PSNH rights of way, it is clear that any access should be at price that replicates the market; what a willing seller and willing purchaser would agree to in an arm's length transaction. The proposed regulations stipulate that such should be the measure of any exchange between NPT and PSNH.

There is, in addition, little if any information as to how the purchase and sale or other forms of real estate transactions would transpire between PSNH and NPT. As noted above, newspaper reports cite transactions at \$200,000/acre in Northern New Hampshire, the purchaser apparently being a straw real estate entity. Suffice it to say use of the PSNH rights-of-way by NPT should be subject to close scrutiny. Under New Hampshire law utility management will have the burden of proof in establishing that any such purchases and sales were just and reasonable. See NH RSA 366:5.

In the final analysis, the Northern Pass project is designed to enable its contractual party HQ Hydro and its marketing affiliate to market power generated in Quebec into the New England competitive power markets. The prices HQ Hydro and its marketing affiliate receive will include the cost of transmission over the Northern Pass project. Any subsidies by PSNH ratepayers to the costs of that transmission will, to the detriment of PSNH ratepayers, inure to any party purchasing power in New England from HQ Hydro and its marketing affiliates. No standalone transmission project (there are at least three contemplated for New England) and no competitive generator enjoys these benefits. For these reasons it is imperative that the Commission police the relationship between NPT and PSNH to assure transparency in this relationship and prevent cross subsidization of the Northern Pass arrangements by PSNH ratepayers.

6. **It Appears that PSNH and NPT Have Not Met Certain Filing Requirements Under New Hampshire Law**

NH RSA 366:3 of the New Hampshire Statutes provides:

The original or a verified copy of any contract or arrangement and of any modification thereof or a verified summary of any unwritten contract or

arrangement, the consideration of which exceeds \$500, hereafter entered into between a public utility and an affiliate providing for the furnishing of managerial, supervisory, construction, engineering, accounting, purchasing, financial, or any other services either to or by a public utility or an affiliate shall be filed by the public utility with the Commission within 10 days after the date on which the contract is executed or the arrangement entered into. The Commission may also require a public utility to file in such form as the Commission may require full information with respect to any purchase from or sale to an affiliate, whether or not made in pursuance of a continuing contract or arrangement.

NH RSA 366:4 further provides:

Any contract or arrangement not filed with the Commission pursuant to RSA 366:3 shall be unenforceable in any court in this state and payments thereunder may be disallowed by the Commission unless the later filing thereof is approved in writing by the Commission.

Based on the information available to date, there was no filing by either PSNH or NPT setting forth their arrangements between one another. PSNH did state in response to the staff investigation that there are no written agreements between PSNH and NPT (Staff Report at 8). PSNH, however, went on to state:

RSA 366:3 does not require a continuing contract or arrangement between a public utility and an affiliate. (Staff Report at 8).

This statement misreads the obvious intent of both statutes cited above. These statutes require a filing describing arrangements so that the Commission knows the nature and terms of any arrangement so that the Commission can be assured that there is no affiliate abuse. Whether the relationships and arrangements are continuing or not is not the issue. The point of the statutory provisions is disclosure.

C. Description of Revisions to Commission Regulations

As pointed out previously PSNH and NPT have honored the provisions of NH RSA 366:3 only in the breach. The Commission staff has only partially uncovered PSNH/NPT relationships and those relationships staff has uncovered raise more questions than have been answered so far. What is needed in light of these developments are amendments to the Commission's regulations that clearly require adherence to the statutory commands governing affiliate relationships.

First NEPGA's proposed amendments are designed to respond to the statutory commands of NH RSA 366:3. The proposed amendments do so by requiring Competitive Affiliates, including "Energy Project Development Affiliates" to file comprehensive "compliance plans" with the Commission laying out all the details of the affiliate relationships (Puc 2106.01). Annual updates, and audits of plans are prescribed along with certifications as to the accuracy of

the plan by officers of the affiliates (Puc 206.02, .03, .04 and .05). The purposes of NH RSA 366.3 and 366.4 are transparency and accountability. NEPGA's proposed amendments to the regulations as noted are designed to serve these purposes.

A second purpose of NEPGA's proposed regulations is to put the Northern Pass project on an equal footing with other entrants and existing competitive participants, both transmission and generation, in New England's power markets. As described above the Northern Pass project should be no different from any other energy project development that operates on a competitive basis. This means there are no shared services, no assigned personnel, no joint participation at public meetings, no shared lobbying or public relations services, no shared administrative and general services and no construction, engineering or other project development services between NPT and PSNH. NPT and any other energy project development affiliate will and should be required to procure those services in the market. While this should all hold true under even existing statutes and regulations, the attached proposed amendments clarify and help provide a message to the marketplace that this type of affiliate abuse cannot continue and should not occur again.

As originally promulgated Chapter 2100 appears to be designed to deal with affiliate abuse in the restructured retail markets for electricity and natural gas. Those provisions, as designed, prevent in major part affiliate abuse in the retail markets. The revisions to Chapter 2100 add a new definition to the regulations: Energy Project Development Affiliate (Puc 2102.9). An Energy Project Development Affiliate is included in the definition of "Competitive Affiliate" (Puc 2102.02). The definition of Energy Project Development Affiliate is applicable to any instance in which a rate-based utility has an affiliate that is engaged in an energy project development that will be involved in the competitive power markets and in this case would also include the NPT and any other project development entity affiliated with regulated public utilities. The purpose of adding this definition is to prevent subsidies from the regulated affiliates and their ratepayers to an affiliated enterprise that, if it were unaffiliated, would undertake project development and finance at its own cost, with its own employees and consultants and with its own arm's length contracts for equipment procurement, land acquisition, and environmental studies in the same manner as any competitive/merchant energy project.

The effects of adding the definition Energy Project Development Entity to the definition of Competitive Affiliate are to make applicable the restrictions on Competitive Affiliate relationships in Chapter 2100 to NPT and other energy project development affiliates of regulated public utilities. Because the regulations concerning relationships with a "Competitive Energy Affiliate are more proscriptive, the revised regulations include Energy Project Development Affiliate wherever the regulations prescribe restraints on Competitive Energy Affiliates. See Puc 2103.05; 2103.07; 2103.08 (a); 2103.10 (c); 2104.03; 2105.02 (c) and (e); 2105.04 (b) (c) (d); 2105.05 (c) (d); 2105.06 (a) (c) (d) (f) (g) (i) (k) (m) (n); 2105.07 (b) (c); 2105.08 (d) (f); and 2106.04

With these definitional changes and the inclusion of the term Energy Project Development Affiliate in the more proscriptive provisions of the current regulations, the revised regulations will prevent, if enforced by the Commission or the public, the kinds of suspected or actual affiliate abuse already observed in connection with the relationship of PSNH and NPT. At the same time the revisions retain the form and structure of the current regulations.

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Attached to this letter is a redlined version of Chapter Puc 2100 showing the proposed amendments to that Chapter. This redlined version provides the text of the amendments as described above. Pursuant Puc 205.03 (h) (1) NEPGA requests the Commission initiate a rulemaking procedure to address the amendments to Puc 2100 as set forth in this request for rulemaking.

Respectfully submitted,



Dan Dolan, President
New England Power Generators Association