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March 25, 2015

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

**RE:** Request for Rulemaking Pursuant to PUC 205.03 of the Rules of the New Hampshire Public Utilities Commission  
Docket No. DRM 14-234

Dear Ms. Howland:

The New England Power Generators Association, Inc. (NEPGA) appreciates the opportunity to submit comments regarding the New Hampshire Public Utilities Commission (PUC) rulemaking docket regarding Affiliate Transactions.<sup>1</sup> NEPGA appreciates the thorough and comprehensive approach taken by the PUC and its Staff in addressing this important issue and would like to offer a few suggested enhancements to the PUC's February 4, 2015 proposed changes to Chapter Puc 2100.

NEPGA is the trade association representing competitive electric generating companies in New England. NEPGA's member companies represent approximately 25,000 megawatts (MW), or 80 percent of all generating capacity in the region. In New Hampshire, NEPGA represents over 2,700 MW of generation or two-thirds of the state's electric generating capacity. NEPGA's members in the state provide more than 800 well-paying and skilled New Hampshire manufacturing jobs and contribute approximately \$46 million in state and local taxes. NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. We believe that sustainable competitive markets are the best means to provide long-term reliable and affordable supplies of electricity for consumers.

### **NEPGA'S BROAD POLICY POSITION ON RULEMAKING DOCKET**

NEPGA appreciates and supports the PUC's timely efforts to update the Affiliate Transaction Rule. Over a decade ago the state first pursued electric restructuring efforts

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<sup>1</sup> The views in these comments reflect those of NEPGA and not necessarily the position of each individual member.

and those efforts continue today. As the industry continues to mature and new competitive structures emerge it only makes sense to ensure that the affiliate transaction rule reflects that changing industry reality. It is vitally important that the rules that govern the relationship between the monopoly function of a utility and competitive services are very clear and enforceable. The PUC plays a critical role in the restructured electric environment to ensure a level playing field exists, and that the rules governing affiliate transactions are administered in such a way to ensure that ratepayers are not funding either one competitor over another, or activities that more fairly should be shouldered by shareholders, not ratepayers. NEPGA supports the changes contemplated in this rule-making and believe they reinforce this role of the PUC.

## **NEPGA'S SPECIFIC POSITION ON STAFF'S PROPOSED RULES**

While NEPGA strongly supports the PUC's suggested edits to the Affiliate Rule, we do believe there are additional areas that should be addressed to add even greater transparency. These suggestions focus largely on the areas of advocacy, lobbying and marketing. NEPGA's proposed changes would also enhance the ability of the PUC to enforce the Affiliate Rule. The remainder of our comments detail these proposed changes and offer suggested language for consideration as the PUC prepares its final update to the Affiliate Transaction Rule.

### ***PUC 2101.04 Circumvention Prohibited***

NEPGA suggests that this section should be edited to clarify that any contract or arrangement would cover not only written arrangements, but also oral or "handshake" agreements. This is clearly the intent of the Rule and would add greater transparency. Suggested language includes:

(b) Enter into any contract or arrangement with an affiliate, either written or oral, that would circumvent these rules or RSA 366;

### ***PUC 2103.10 Business Development and Customer Relations Regarding Competitive Affiliates***

NEPGA suggests that language needs to be added to this section expressly prohibiting the utility from attending advocacy or lobbying meetings with customers or potential customers, or state and local officials except as permitted by the Commission on a case-by-case basis. If the utility were to share any leads with its competitive affiliates or shares certain information this information should be reported to the PUC in a public filing. This change would ensure that any interactions the utility has with customers or public officials would be done on a level playing field and that it would not be speaking or acting in any way on behalf of its competitive affiliate. Suggested language includes adding the following subsection:

(c) A utility may not attend advocacy or lobbying meetings with customers or potential customers, or state or local officials, with its competitive affiliates, except as expressly permitted by the commission on a case by case basis,

NEPGA understands that there was skepticism expressed at the March 17, 2015 technical session in this docket on the idea of permitting exceptions on a case-by-case basis. Given this, another approach could be to modify the Rule to allow a limited opportunity to seek a variance this condition but only under a limited set of circumstances.

***PUC 2015.07 Joint Advertising and Marketing***

Similar to the lobbying/advocacy item noted above, NEPGA believes there should be a prohibition from utilities engaging in joint advertising or marketing or indirectly marketing any product or service offered by its competitive affiliate. Suggested language includes a new subsection:

(b) A utility shall not:

(1) Engage in joint advertising or marketing programs of any sort within its competitive affiliate; or

(2) Directly or indirectly promote or market any product or service offered by any competitive affiliate.

In addition in this section, NEPGA suggests the following edit:

~~(d)~~ (e) For purposes of ~~(b)~~(c) (2) above, the term “joint activity” shall include, but is not limited to, advertising, sales, marketing and communications with public officials and with any existing or potential customer and appearances at public meetings or before local or state official and agencies.

***PUC 2105.08 Corporate Identification***

As a means to provide necessary transparency and preserve a level playing field, NEPGA suggests that language be added to this section to prohibit a utility from providing advertising space in its billing envelopes or other written communications. Suggested additions include the two following new sections:

(d) A utility shall not permit a competitive affiliate, to identify itself, through the use of a name, logo, or both, as an affiliate of the utility, except in filings with the commission, any other government agency, any court or tribunal.

(f) Notwithstanding the provisions in (e) (1) and (2), a utility shall not provide its competitive affiliate with advertising space in its billing envelopes used for regulated utility services or access to any other form of written communication with utility customers.

***PUC 2106.04 Notification to Commission and Compliance Plan***

In addition to clarifying issues related to lobbying, advocacy and marketing, NEPGA believes a final important enhancement to the Affiliate Transaction Rule is to provide greater enforcement power to the PUC to ensure adherence. As such NEPGA suggests adding a new provision requiring the filing of contracts and/or arrangements with competitive affiliates within 10 days (instead of 90 days) with a significant and enforceable penalty if such contracts and/or arrangements are not filed in this timely fashion. NEPGA suggests the following new sections:

(c) A utility shall file with the commission complete written copies of all contracts and detailed, written descriptions of all arrangements with competitive affiliates within 10 days after that date on which the contract is executed or an arrangement entered into.

(d) 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 late filing thereof is approved in writing by the commission.

(e) If a utility fails to provide the information required in Puc 2016.04 in the manner and time required, it shall be subject to fines of up to \$10,000 per day, up to the statutory maximum.

## **CONCLUSION**

NEPGA appreciates the PUC's diligence and effort in reviewing and proposing the February 4, 2015 revisions to the Affiliate Transaction rule. NEPGA strongly supports the PUC's efforts to update the standing rules and the overall direction begun in the PUC's proposed revisions. NEPGA does not oppose this version but does respectfully request for the PUC to consider our suggested changes as they would provide additional necessary transparency by focusing on the important functions of advocacy, lobbying and marketing.

Please do not hesitate to contact me directly with any questions or comments regarding NEPGA's position or any of the issues we raised in our written comments.

Sincerely,

A handwritten signature in cursive script that reads "Sandi Hennequin".

Sandi Hennequin