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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

March 17, 2015 - 10:10 a.m.
Concord, New Hampshire

NHPUC APR01'15 PM 3:36

RE: **DRM 14-234**
RULEMAKING:
Rulemaking regarding Puc 2100,
Affiliate Transactions.
(Hearing to receive public comment)

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Robert R. Scott

Sandy Deno, Clerk

APPEARANCES: (No appearance taken)

Court Reporter: Steven E. Patnaude, LCR No. 52

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I N D E X

PAGE NO.

PUBLIC STATEMENTS BY:

Ms. Hennequin

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Mr. Fossum

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P R O C E E D I N G

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2 CHAIRMAN HONIGBERG: Good morning. We
3 are here this morning on DRM 14-234, rulemaking on Puc
4 2100 regarding affiliate transactions. Puc 2100
5 implements RSA Chapter 366 and its regulation of contracts
6 and arrangements between utilities and their affiliates.
7 A rulemaking notice was filed with the Office of
8 Legislative Services and was sent to all regulated
9 electric and gas utilities and interested parties. We're
10 here for the required public hearing. Following this
11 hearing, Staff will hold a technical session with
12 interested parties for purposes of discussing the proposed
13 amended rule.

14 We have five people who signed in, but
15 only two of whom wish to speak. That's outstanding. And,
16 I can pronounce all the names today. So, we have Sandi
17 Hennequin and Matthew Fossum are the only two people
18 signed up to speak. Sandi, since your name is first on
19 this list, if you don't mind going first, that would be
20 great. Just pull a microphone close enough, make sure the
21 red light is on.

22 MS. HENNEQUIN: Is that okay?

23 CHAIRMAN HONIGBERG: The floor is yours.

24 MS. HENNEQUIN: Thank you. Good

1 morning. Thank you for the opportunity to testify and to
2 offer some of our comments. My name for the record is
3 Sandi Hennequin. And, I'm Vice President of the New
4 England Power Generators Association. With me is Jim
5 Monahan, the Vice President of the Dupont Group. Jim
6 works with NEPGA on legislative and regulatory issues.

7 NEPGA, as you're aware, is a trade
8 association that represents competitive electric
9 generating companies throughout New England and in New
10 Hampshire. We represent about 80 percent of all power
11 plants, and about two-thirds of all the plants here in New
12 Hampshire.

13 Speaking specifically to this docket, on
14 a broad level, we appreciate and support the Commission's
15 efforts to update these rules. Over a decade ago, the
16 state first pursued electric restructuring efforts, and,
17 as we know, those efforts continue today. Updating these
18 rules as the industry continues to mature really makes a
19 lot of sense. It's important that the rules that govern
20 the relationship between the monopoly function of a
21 utility and competitive services are very clear and
22 enforceable. We believe the PUC plays an important role
23 in this environment. Given this, I'd like to just go
24 right to some of the specific comments that we have about

1 the proposed rules.

2 On a very high level, we don't oppose
3 the suggested edits to the Affiliate Rule. However, there
4 are a couple of places where we think it could go a little
5 further. And, we are planning to submit written comments.
6 So, I'll go more into detail in the written comments with
7 some proposed language. But I wanted to just point out a
8 couple of places through the rules where we think that
9 maybe we can go just a little further.

10 CHAIRMAN HONIGBERG: Ms. Hennequin, just
11 one second. I should have said that, on the record, that
12 the period for the submission of written comments will be
13 open until March 25th. So, thank you for reminding me of
14 that.

15 MS. HENNEQUIN: Okay. Great. Thank
16 you. Just a couple of places. And, again, I'll just, at
17 a very high level, point out where we think some
18 additional changes could be made.

19 The first is Puc 2101.04, Circumvention
20 Prohibited. Under subsection (b), we believe that this
21 should be edited so that it reads "Enter into any contract
22 or arrangement with an affiliate, either written or oral,
23 that would circumvent these rules." We believe this
24 change, and this change is really adding the "either

1 written or oral", would ensure that any oral or
2 "handshake" agreements would be covered by this section.

3 The second area that we wanted to
4 highlight is Puc 2103-10, Business Development and
5 Customer Relations Regarding Competitive Affiliates. We
6 believe, and again we can add more specific proposed
7 language, but we believe that language needs to be added
8 to this section that would prohibit the utility from
9 attending advocacy or lobbying meetings with customers or
10 potential customers, or state and local officials except
11 for as permitted by the Commission on a case-by-case
12 basis. Also, if the utility were to share any leads with
13 its competitive affiliates or share certain information,
14 we believe this should be reported in a public filing.
15 And, really, the purpose of this proposed change is just
16 to ensure that the utility, when they're dealing with
17 their customers or public officials would be doing so on a
18 level playing field.

19 The third area where we wanted to
20 propose some changes is Puc 2105.07. This is the "Joint
21 Advertising and Marketing" section. And, this is really
22 similar to the item that I just mentioned with lobbying
23 and advocacy. We believe that there should also be a
24 prohibition from the utilities from engaging in joint

1 advertising or marketing or indirectly marketing any
2 product or service that would be offered by their energy
3 development affiliate. Also in this section, under
4 subsection (e), we'd like to see a clause added to say, in
5 quotes, "appearances at public meetings or before local
6 and state officials and agencies." So, again, this is
7 very much in the vein of what we had proposed earlier.
8 And, it really would seek to preserve the necessary
9 transparency and level playing field.

10 Two more changes. The next is Puc
11 2105.08. And, this is "Corporate Identification". Again,
12 in the same vein as I've been talking about, to preserve
13 the transparency and a level playing field. We believe a
14 provision should be added here to this section that would
15 prohibit the utility from providing advertising space in
16 its billing envelopes or other written communication with
17 its customers.

18 And, then, the final area where we
19 suggest some enhancements is Puc 2106.04. And, this
20 section is "Notification to Commission and Compliance
21 Plan". This kind of goes back to what I said at the
22 beginning, that we think updating these rules, not only to
23 preserve a level playing field and transparency, but also
24 to give greater enforcement ability. We believe that this

1 is a section where we would do that. And, we believe a
2 provision should be added to this section to require a
3 filing of any contracts or arrangements with a competitive
4 affiliate within a certain period of time, we suggest
5 perhaps ten days, and then any contracts or arrangements
6 that are not filed would not be enforceable, and, in
7 addition, would be subject to a fine, perhaps on a daily
8 basis. Again, just kind of giving it a little more teeth.

9 So, just to wrap up. Again, we
10 appreciate the efforts and work in producing these
11 proposed changes to the Affiliate Transaction rule. We
12 don't oppose what's been proposed, we just think we could
13 go a little bit further. And, really, this would add
14 greater transparency. And, really, our comments focus on
15 advocacy, lobbying, and marketing. And, again, we'll be
16 filing written comments. And, at that point, if it would
17 be helpful, we can propose some more specific language
18 around these suggested changes.

19 So, in conclusion, I thank you for the
20 opportunity to offer these comments. And, I'd be happy to
21 answer any questions.

22 CHAIRMAN HONIGBERG: Okay. Thank you
23 very much. Mr. Fossum.

24 MR. FOSSUM: Thank you. And, good

1 morning. I'll begin by also indicating that -- well, for
2 the record, Matthew Fossum, here on behalf of Public
3 Service Company of New Hampshire, doing business as
4 Eversource Energy. And, I'll begin by saying that we
5 also, Eversource that is, intends to file written comments
6 by the deadline next week. And, we would have some
7 specific recommendations on language or the like in there.
8 So, I won't go into extreme detail today.

9 I'll start by, I guess, saying something
10 that we have already said in a couple of the filings that
11 we have presented in this docket. Which is that it's
12 not -- it still remains somewhat unclear to us what the
13 intended result is of this rulemaking or exactly what
14 issues it's intended to correct. The existing rules, as
15 I'm sure the Commissioners are aware, were adopted in
16 2011, with relatively little comment or issue. They went
17 through very smoothly. No one has, to my knowledge,
18 identified any particular concerns or issues that needed
19 to be addressed at that time. And, then, only a couple of
20 years later, when, as far as I know, nothing material has
21 changed with anything that will be relevant to these
22 rules, there's now a proposal for fairly extensive
23 amendments to the rules.

24 So, we would again state that, again, as

1 we have in a couple of the filings, that we don't
2 understand there to be any particular justification for
3 revising the rules at this time. Or, at a minimum, we
4 don't see there being cause for the changes -- for the
5 scope of changes that are proposed in the Initial Proposal
6 from January.

7 We would also note that, to our reading,
8 at least some of these rules appear to create more issues
9 than they solve. For example, I would note that the
10 proposed change to Puc 2105.07, one of the rules that was
11 referenced by NEPGA just a few moments ago, now appears to
12 state that appearances before state and local officials
13 now qualify as advertising or marketing, and it places
14 restrictions around activity, including that that activity
15 be otherwise consistent with the rules. So, it would
16 appear that, if a utility and a covered affiliate appeared
17 even here before the Commission, they would have to
18 observe some sort of actions or activities or manner of
19 speech that is otherwise consistent with these rules.
20 And, it's not clear what that might be.

21 Similarly, I would -- an issue that
22 seems to be created by these amendments is in 2106, and
23 specifically 2106.01(f). The amendment there states that
24 "If a utility fails to provide the information it's

1 required by 2106", which is information about compliance
2 plans and the like, if it fails to provide that
3 information "in the manner and time required, it shall be
4 subject to disallowance ... and may be subject to
5 penalties."

6 Looking at the notification requirement
7 in 2106.04, one of the things that the utility is required
8 to do is to file an entirely new compliance plan it
9 appears to be within 10 days of the creation or
10 acquisition of the commencement of business activities of
11 the affiliate. Now, if the utility is acquiring what
12 would become a competitive energy affiliate, that
13 affiliate has already commenced its business activities.
14 It's acquiring an existing company. There's no way that
15 that deadline could be met, and the utility is
16 automatically in breach of the rules, and is subject to
17 disallowance and potential civil penalties. That just
18 seems remarkably unfair to us.

19 I would also note that one of the rules
20 that was mentioned in the NEPGA comments a few comments
21 ago, 2103.10, renewed a request that there be a
22 prohibition in there that is evaluated by the Commission
23 on a case-by-case basis. Eversource had offered comments
24 during the advance comment period that the Staff had

1 opened I believe it was about a month and a half ago.
2 And, at that time, we had noted that having a rule that
3 requires a case-by-case adjudication isn't really a rule.
4 It's a requirement to make a filing and have the
5 Commission adjudicate something. It's not a rule that can
6 be applied. Rules are, by definition, rules of general
7 applicability to activity. So, having case-by-case
8 evaluations on the propriety of that activity isn't really
9 a rule.

10 So, to close, it's our opinion that
11 there are some affiliate activities that are unregulated,
12 and that they should remain so. These activities, to my
13 knowledge, and so far, do not impinge upon the utility,
14 customers, competitive market, and making them regulated
15 activities by making the amendments that are in these
16 rules adds restrictions that don't need to be there.

17 It is our opinion that the Commission's
18 existing rules and its existing authority under law are
19 sufficient to investigate and enforce any potential issues
20 that might affect the offering of competitive services by
21 utility affiliates in New Hampshire. And, that there is
22 at this point no cause to amend the rules.

23 And, with that, I would close by again
24 noting that we will file additional comments in writing

1 next week by the deadline.

2 CHAIRMAN HONIGBERG: All right. Thank
3 you, Mr. Fossum. We have some other people who are here,
4 didn't sign up that they want to speak. Ms. Tebbetts, is
5 there anything you want to offer up today?

6 MS. TEBBETTS: No.

7 CHAIRMAN HONIGBERG: Mr. Taylor?

8 MR. TAYLOR: No.

9 CHAIRMAN HONIGBERG: Mr. Brennan?

10 MR. BRENNAN: No thank you.

11 CHAIRMAN HONIGBERG: How about anybody
12 from Staff? Mr. Sheehan?

13 MR. SHEEHAN: No, sir. I think our
14 discussions will be most productive in the tech session,
15 we can learn some detail what was raised today, and
16 hopefully incorporate them into any further changes.

17 CHAIRMAN HONIGBERG: Commissioner,
18 anything else?

19 (No verbal response)

20 CHAIRMAN HONIGBERG: All right. So, the
21 written comment period is open until March 25th. You have
22 your technical session that's about to start. I thank you
23 all very much. And, we will adjourn.

24 **(Whereupon the hearing was adjourned at 10:25 a.m.)**