

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DE 14-238

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Determination Regarding PSNH's Generation Assets

**Granite State Hydropower Association's Reply to Response and Objections of
Public Service Company of New Hampshire to Petitions to Intervene**

NOW COMES Granite State Hydropower Association, Inc. ("GSHA"), a New Hampshire association representing small hydroelectric power producers and, pursuant to the orders from the Bench on October 2, 2014, respectfully replies to Public Service Company of New Hampshire's ("PSNH's") response and objections to GSHA's September 29, 2014 petition to intervene ("PSNH Objection"). In support of this Reply, GSHA states as follows:

1. The Public Utilities Commission ("PUC") opened this docket on September 16, 2014 with an Order of Notice referencing a recent amendment to RSA 369-B:3-a requiring the Commission to "commence and expedite a proceeding to determine whether all or some of PSNH's generation assets should be divested." Order of Notice (Sept. 16, 2014) at 1. GSHA filed a petition to intervene within the deadline established in the Order of Notice.
2. The statutory standards for intervention are set forth in RSA 541-A:32, I and II. First, a petition for intervention *must* be granted if the petitioner states facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding (or the petitioner qualifies under any provision of law)

and the interests of justice and orderly and prompt conduct of the proceedings would not be impaired by allowing intervention. *See* RSA 541-A:32, I(b) and (c). Second, the Commission *may* grant a petition to intervene “at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly conduct of the proceedings.” RSA 541-A:32, II; *see also* N.H. Admin. R. Puc 203.17 (requiring the Commission to grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32).

3. PSNH asserts that GSHA does not meet the standard for mandatory intervention and it should not be granted discretionary status. PSNH is incorrect on both counts.

4. First, as a preliminary matter, PSNH’s reliance on *Appeal of Pinetree Power* to enunciate the RSA 541-A:32 intervention standard is mistaken. By asserting that the only interest at stake in this proceeding is the “economic interests of PSNH’s retail customers,” PSNH concludes that intervention should effectively be limited to retail customers or others expressly listed in HB 1602. *PSNH Objection* at ¶ 1. However, whether divestiture is in the economic interests of PSNH’s retail customers can implicate the “rights, duties, privileges, immunities or other substantial interests” of a Petitioner even if they are not specifically a retail customer. Put simply: the outcome of this proceeding implicates the substantial interests of GSHA’s members, whether or not GSHA itself is a retail customer of PSNH.

5. From a factual standpoint, GSHA meets the “substantial interests” test. As Staff indicated at the October 2, 2014 Prehearing Conference, one set of substantial interests which may arise in this docket relates to the 1999 Agreement to Settle PSNH Restructuring (“Settlement Agreement”), which was accepted by this Commission in

Docket DE 99-099. GSHA was a party to the Docket DE 99-099 proceedings, and Richard Norman, current president of GSHA, provided testimony in that docket.¹

6. The Settlement Agreement specifically enunciates what PSNH's responsibilities and avoided cost rates will be for "short-term purchases of IPP power."² *Agreement to Settle PSNH Restructuring* at 36. As indicated in GSHA's Petition to Intervene, GSHA's member projects have specific rights as small power producers under federal law, 16 U.S.C. § 824a-3(m), and these member projects sell power to PSNH in accordance with this element of the Settlement Agreement.³ As a result, GSHA's interests are specific and distinguishable from other petitioners for intervention to this docket, and GSHA's members have a direct and substantial interest.

7. Further, several GSHA members *are*, like Pentti J. Aalto, "individual retail customer[s] of PSNH." *See PSNH Objection* at 9. To omit GSHA from this proceeding because it is an association of such members is to promote form over function, encouraging individual entities to intervene rather than as a group.

8. Finally, one entirely foreseeable outcome of this proceeding is that PSNH's hydroelectric facilities are spun off into an affiliated company. This would create a circumstance similar to that regarding Liberty Utilities in Docket DE 11-040, in

¹ A non-exclusive list of dockets in which GSHA has intervened and/or participated includes:

- Docket DG 11-040 (Transfer of Ownership of Granite State Electric Company and EnergyNorth Natural Gas, Inc. to Liberty Energy NH)
- Docket DE 11-184 (Joint Petition for Approval of Power Purchase and Sale Agreements and Settlement Agreement)
- Dockets DE 08-053, 08-123, and 08-124 (regarding Class IV Renewable Energy Certificate Eligibility)
- Docket DE 06-061 (Investigation into Implementation of Standards in the Energy Policy Act of 2005)
- Docket DE 03-200 (Request for Approval of Rate Increase and Associated Tariff Revisions)

² GSHA's member projects have a right, under federal law, to sell their power to PSNH at a rate equal to PSNH's avoided costs. *See also* 16 U.S.C. § 824a-3(m); 18 C.F.R. Part 292. The 1999 Restructuring Agreement, and/or how PSNH's avoided costs are calculated clearly implicate GSHA's substantial interests.

³ Eighteen member projects, comprising of approximately 22 megawatts, sell power to PSNH pursuant to the 1999 Settlement Agreement.

which Liberty's owner, Algonquin Power & Utilities Corporation, owned eight small hydroelectric power projects in New Hampshire. GSHA moved to intervene in that docket, expressing concern because its member projects would have been in the same position as Algonquin's projects but without the affiliate relationships with a wholesale power purchaser. The PUC granted that intervention request. *See Transcript of Hearing in Docket DE 11-040* at 30:21-22 (Chairman Getz finding that GSHA "demonstrated rights that may be affected by the proceeding").

9. These facts demonstrate that GSHA is a mandatory intervenor in this docket, or, at the least, that it should be granted discretionary intervenor status.

10. In addition, PSNH's legal arguments regarding intervention in this matter are particularly faulty. First, PSNH equates standing for declaratory judgment matters filed in accordance with RSA 491:22 in Superior Court to administrative standing under RSA 541-A. *See PSNH Objection* ¶ 4 (citing *Duncan v. State*, ___ N.H. ___, *slip op.* at 10 (Aug. 28, 2010)).⁴ There is no basis for this analogy. Similarly, PSNH's reliance on the recent PUC Order in Docket DE 14-211 is inappropriate. That docket concerned Liberty Utilities' request for approval of "an alternate plan for procurement of energy service requirements . . . in the event of an unsuccessful competitive solicitation for such requirements." Order No. 25,715 (Sept. 8, 2014). Docket DE 14-211 did not involve a major structural change akin to divestiture; rather it concerned one season of bidding and required immediate action. *Id.* at 3-4 ("If any alternative process if [sic] approved, it is intended to be a one-time solution to deal with that contingency"). The Commission indicated that it would "begin a separate stakeholder process to explore procurement of retail electricity supply for New Hampshire Customers" through which the potential

⁴ Note also that this case is currently subject to a motion for rehearing. *See* <http://nhclu.org/wp-content/uploads/2014/08/Plaintiffs-Motion-for-Rehearing-or-Reconisderation.pdf>

intervenors could provide their feedback and analysis. Docket DE 14-211 hardly provides support for exclusion from the instant docket.

11. PSNH's analogy to the *Nautilus of Exeter v. Town of Exeter* case is also faulty. 139 N.H. 450 (1995). First, the RSA 676:5, I "by any person aggrieved" standard applied in *Nautilus* is narrower than the potential impact to the "rights, duties, privileges, immunities, or other substantial interests" required under RSA 541-A:32. *PSNH Objection at ¶ 16*. More importantly, the *Nautilus* decision concerned a planning board decision regarding the siting of a single exercise and rehabilitation center, and applied New Hampshire land use law. It was not a case concerning the entirety of the regulatory structure that applies to approximately seventy-five percent of the State of New Hampshire. To assert that GSHA's interests in this docket are akin only to a risk of increased competition (as a result of a similar neighboring facility) fails to recognize: (1) the potential breadth of a docket about the appropriate regulatory structure for PSNH's service territory; (2) that GSHA members are PSNH customers who are specifically identified in HB 1602; and (3) that GSHA's members are owed statutory obligations, as well as obligations under the 1999 Settlement Agreement.

12. The scope and organization of this docket remain nascent. Uncertainty regarding how the docket will proceed substantively means that formal consolidation or limitation of participation pursuant to RSA 541-A:32, III at this juncture is inappropriate, potentially prejudicial, and inefficient. GSHA's specific interests in hydroelectric projects, the treatment of GSHA's members under federal law and the 1999 Settlement Agreement, and GSHA's intervention and active participation in Docket DE 99-099 support the conclusion that GSHA should be permitted full intervenor status and should

not be formally consolidated with any other party. To be sure, GSHA will cooperate with other parties as appropriate when their interests and goals are properly aligned.

13. With respect to PSNH's concerns regarding confidentiality and cooperation, GSHA agrees, as required RSA 541-A and by the PUC's procedural rules, to not impair the orderly conduct of this proceeding. *See* GSHA Motion to Intervene (Sept. 29, 2014).

14. In conclusion, the PUC Staff's statements at the prehearing conference are particularly relevant to the present analysis; Staff clarified that in part it considers this docket more akin to an investigation than an adjudicatory proceeding. As such, a narrow view of intervention is hardly appropriate.

WHEREFORE, GSHA respectfully requests that the Commission grant it full intervenor status in the proceeding and grant such other relief as the Commission deems just and equitable.

Respectfully submitted,

GRANITE STATE HYDROPOWER ASSOCIATION

By its attorneys,
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Dated: October 9, 2014

By: 

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Certificate of Service

I hereby certify that a copy of the foregoing Petition has on this 9th day of October, 2014 been either sent by electronic or first class mail, postage prepaid, to persons listed on the Service List.



Rachel Aslin Goldwasser

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