

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

Joint Petition for Approval of Merger between
NSTAR and Northeast Utilities Pursuant to
G.L. c. 164, § 96

D.P.U. 10-170

**PETITION TO INTERVENE OF NEW ENGLAND POWER GENERATORS
ASSOCIATION, INC. AS A PARTY**

Introduction

Pursuant to 220 C.M.R. § 1.03, the New England Power Generators Association, Inc. ("NEPGA") hereby petitions the Department of Public Utilities ("Department") to intervene as a party in the above-captioned docket.¹ As grounds therefor, NEPGA states as follows:

1. NEPGA is a private, non-profit entity that advocates for the business interests of non-utility electric power generators in New England. NEPGA has offices located at 141 Tremont Street, Boston, MA 02111.

2. NEPGA's member companies represent approximately 27,000 megawatts of electrical generating capacity throughout the New England region, with approximately 12,000 megawatts in Massachusetts. NEPGA's mission is to promote sound energy policies which will further competitive energy markets, economic development, jobs, and a balanced environmental policy. NEPGA's member companies are responsible for generating and supplying electric power for sale within the New England bulk power system.

¹ The comments contained in this filing represent the position of NEPGA as an organization, but not necessarily the position of any particular member(s) with respect to any statement, concept, issue or position expressed herein.

Background

3. On November 24, 2010, NSTAR Electric Company (“NSTAR Electric”) and NSTAR Gas Company (“NSTAR Gas”), along with their parent holding company NSTAR (the NSTAR entities are referred to collectively as “NSTAR”), and Western Massachusetts Electric Company (“WMECo”), along with its parent holding company Northeast Utilities (“NU”) (collectively NU, together with NSTAR, “Petitioners” or “NU-NSTAR”), filed a joint petition seeking approval to merge NSTAR and NU into a consolidated organization (“Proposed Merger”), pursuant to G.L. c. 164, § 96.

4. The Petitioners also filed joint testimony of James J. Judge for NSTAR and David R. McHale for NU (“Joint Testimony”) and an Agreement and Plan of Merger dated October 16, 2010 (“Merger Agreement”).

5. On December 14, 2010, the Department issued a Notice of Filing and Public Hearing (“Notice of Filing”) and set forth a schedule for interventions and for a public hearing. This Petition to Intervene is submitted pursuant to the Notice of Filing.

6. In its submittal, the Petitioners state, *inter alia*, that the Proposed Merger will create a new entity with an enterprise value of approximately \$18 billion, a market cap of approximately \$10 billion and over 3.4 million customers in three states. *Joint Testimony* at 19. The new entity, “a merger of equals,” would expand opportunities beyond what either company could accomplish individually, particularly in energy resource development and transmission, *e.g.*, needed infrastructure investment, “to achieve energy goals established by the Commonwealth and the New England region.” *Joint Testimony* at 21. Indeed, in its public announcement of the merger, NU-NSTAR emphasized its definitive plans to aggressively expand development of renewable

resources and transmission infrastructure.² As noted below, NU-NSTAR's Proposed Merger will substantially and specifically impact NEPGA and its members.

Intervention Request

7. NEPGA members provide electric power for sale within the wholesale markets and actively support a competitive, functional, transparent wholesale market and procurement process. As active participants in the ISO-New England Inc. ("ISO-NE") markets, NEPGA members develop, operate and/or utilize energy resources and interconnect with transmission in the Commonwealth and in the region.

8. In the competitive marketplace, NEPGA and its members directly interact with NU and NSTAR for the benefit of their consumer ratepayers. NEPGA members routinely serve NU and NSTAR customers as basic service suppliers pursuant to G.L. c. 164, § 94, and participate in competitive solicitations pursuant to Section 83 of the Green Communities Act. In addition, NEPGA members interconnect with NU and NSTAR transmission facilities and are customers under the Open Access Transmission Tariff administered by ISO-NE. These activities in the competitive marketplace, with NU and NSTAR individually, have long been determined to provide significant benefits to consumers.³

9. With the proposed merger, a new entity, NU-NSTAR, with expanded management, and with significantly enhanced power, resources and influence will emerge to replace what had been NU and NSTAR individually. There is no history with the new entity and no basis to conclude, absent the Department's review, whether

² See, *Merger Announcement*, NU-NSTAR, October 18, 2010, http://www.nu.com/investors/presentations/NU_NST_Investor_Presentation.pdf, at 4, 6, 8.

³ See, for example, *Petition of NSTAR Electric Company*, D.P.U. 07-64-A, at 59-61 (2007).

combining these companies will serve the public interest. In fact, as noted in the Joint Filing, the Department must weigh many factors, including impacts on competition, in its determination of whether this new combined entity is in the public interest.⁴

10. Given its members' significant role as active participants in the competitive electricity market, as noted above, and their ongoing relationships (as suppliers, customers and competitors) with NU and NSTAR, NEPGA and its members have a substantial and direct interest in the outcome of this proceeding. Specifically, NEPGA and its members may be substantially and specifically affected by changes in policy and in the competitive marketplace that may occur as a result of the merger.

11. Although not all impacts may be identified at this early stage of the proceeding, there are indications that NU-NSTAR may seek to implement policies that will significantly affect NEPGA and its members. For example, NU-NSTAR's proposed Northern Pass transmission project, as well as other transmission under consideration, if approved, may impact wholesale competitive market pricing and the development of alternative generation in wholesale markets, and thus will substantially and specifically impact NEPGA and its members.⁵ In addition, NU-NSTAR's plans to develop energy resources pursuant to Section 83 of the Green Communities Act and/or to otherwise seek to develop energy resources will also directly impact competitive development of such

⁴ NEPGA's interests are wholly consistent with the elements to be reviewed by the Department as part of a § 96 review. Specifically, the Department has broad authority to determine that the merger is in the public interest and consider, among other things, the merger's impact on: (i) competition; (ii) reliability and cost effectiveness of the delivery system; (iii) societal and economic impacts; and (iv) rates. *See Bay State Gas Company, et al.* D.P.U. 08-43-A, November 18, 2008, at 25-26; *see also Guidelines and Standards for Acquisitions and Mergers for Utilities*, D.P.U. 93-167-A (1994). As noted herein, NEPGA's interests are germane to this proceeding and relate directly to the specific factors that the Department must consider in its review.

⁵ *Merger Announcement* at 6.

resources and, as market participants and/or competitors, NEPGA and its members.⁶ Notably as well, NU-NSTAR's plans with respect to basic service procurement will also directly impact NEPGA and its members as basic service providers.⁷ Moreover, among other things, the merger may impact system reliability, competition, fuel supply and diversity, all of which are of substantial and specific interest to NEPGA and its members.⁸

12. Thus, NEPGA and its members, as wholesale generators, competitive market participants, suppliers and customers have a substantial and specific interest in ensuring that any determination regarding the Proposed Merger is reasonable, does not adversely impact the competitiveness of a robust wholesale energy market, provides for reliable and cost effective energy supply and delivery, and is consistent with competitive energy resource procurement requirements. Accordingly, NEPGA requests full party status in this proceeding.⁹

13. NEPGA requests the right to participate in all aspects of this case, including, as it deems necessary, the presentation of testimony, cross-examination of witnesses, and presentation of arguments.

⁶ *Id.*, at 8.

⁷ Although NU-STAR referenced the Proposed Merger's impact on retail competition, it did not directly address possible impacts on competitive procurement of basic service supply or of long term contracts under Section 83 of the Green Communities Act. *See Joint Testimony* at 18-19.

⁸ *Joint Testimony* at 15-16.

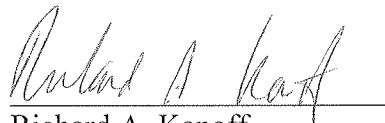
⁹ In allowing NEPGA the right to intervene in other cases, the Department has long recognized the importance of NEPGA's focus on competitive markets and competition and valued its unique ability to contribute significant information. *See Hearing Officer Ruling on Petitions to Intervene and Participate*, D.P.U. 10-54 (July 9, 2010) at 11-12.

Conclusion

Accordingly, for the above-described reasons, the Department should grant the Petition of NEPGA to intervene as a full party in this proceeding.

NEW ENGLAND POWER
GENERATORS ASSOCIATION,
INC.

By its attorney,

A handwritten signature in dark ink, appearing to read "Richard A. Kanoff", is written over a horizontal line.

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Date: January 3, 2011

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NOTICE OF APPEARANCE OF COUNSEL

On behalf of the New England Power Generators Association, Inc. please enter the appearance of Richard A. Kanoff in the above captioned matter.

NEW ENGLAND POWER
GENERATORS ASSOCIATION, INC.

By its attorney,



Richard A. Kanoff
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Telephone: (617) 457-4000
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Dated: January 3, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on this day I have served a copy of the Petition to Intervene, Notice of Appearance, and Certificate of Service by first class mail upon each person designated on the official service list compiled by the Massachusetts Department of Public Utilities for the above-captioned proceeding in accordance with the requirements of 220 CMR 1.05(1).

NEW ENGLAND POWER
GENERATORS ASSOCIATION, INC.

By its attorney,



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Date: January 3, 2011