

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

Joint Petition for Approval of Merger between)
NSTAR and Northeast Utilities, pursuant to) D.P.U. 10-170
G.L. c. 164, § 96.)
_____)

**PETITION TO INTERVENE OF THE
CONSERVATION LAW FOUNDATION**

Pursuant to the November 24, 2010 Notice of Filing and Public Hearing and in accordance with 220 C.M.R. §1.03, the Conservation Law Foundation (“CLF”) hereby petitions to intervene in the above-captioned proceeding or, in the alternative, for status as a Limited Participant.

This proceeding arises from a petition filed by NSTAR Electric Company (“NSTAR Electric”) and NSTAR Gas Company (“NSTAR Gas”), along with their parent holding company NSTAR, and Western Massachusetts Electric Company (“WMECo”), along with its parent holding company Northeast Utilities (“NU”) (collectively, “Joint Petitioners”) seeking approval by the Department of Public Utilities (“Department”) pursuant to Mass. G.L. c. 164, § 96 to merge NSTAR and NU into a consolidated organization (“Proposed Merger”).

The stakes are high. NSTAR and NU are virtual monopolies in electric and gas supply in their respective territories, and the merged entity would service some 3.5 million customers in the New England region while enjoying substantial clout in the market and beyond. As noted in the testimony submitted in support of the Joint Petition, the combined entity would become “the largest utility company in New

England, and one of the largest in the United States.”¹ Moreover, the Proposed Merger arises at a time when the basic rules governing supply of electricity and natural gas have changed substantially, and are continuing to evolve consistent with a new paradigm where obligations to de-carbonize energy supply while massively ramping up renewable energy, energy efficiency and energy conservation coexist with ongoing obligations to ensure reliable and cost-effective supply.

But the Joint Petitioners’ sparse filing, centered on an argument amounting to little more than a claim that “bigger is better,” leaves more questions than answers – and does not lay out a reasonable basis for finding that the Proposed Merger is “consistent with the public interest,” as required pursuant to § 96. Importantly, the Joint Petition fails to provide a meaningful basis for considering whether the merged entities’ long-term strategies will assure a reliable, cost effective energy delivery system consistent with critical environmental and clean energy mandates such as the Massachusetts Global Warming Solutions Act (“GWSA”) and An Act Relative to Green Communities (“Green Communities Act”). In fact, the Joint Petition does not even *mention* these critical statutes.

The Joint Petition’s sole explicit reference to renewable energy is made in the context of complaining that it poses challenges, and no road map whatsoever is suggested for compliance with either the RPS mandate or the Commonwealth’s long-term renewable energy contracting requirements. In addition, public statements by NSTAR and NU suggest a shared interest in *changing* key elements of the Massachusetts RPS (to provide eligibility for large hydropower facilities from

¹ Exhibit JP-1, Joint Testimony of James J. Judge and David R. McHale (November 24, 2010) at p. 6.

Quebec), instead of complying with the existing law. And the Joint Petitioners admit that “[t]he larger scale and scope of the business enterprise will create a stronger voice in regional and national energy policy,” Exhibit JP-1 at 21 – again suggesting a joint interest in building capacity to change the law rather than comply with it.

In this respect, and with respect to an apparently shared interest in collective economic heft, the Joint Petitioners evidently view the merger as essential for enabling their joint partnership with HydroQuebec to invest in a transmission line to bring large hydropower from Canada into New England markets. But would this be done as a complement to the development of land-based and offshore renewable energy in Massachusetts and the New England region, or in *lieu* of it? The Joint Petition suggests the latter approach, and this posture must be taken into account as the Department weighs the societal costs of the Proposed Merger as well as the drawbacks of the merged utilities’ long-term strategies – to the extent they exist or can be discerned – for assuring reliable and cost-effective energy delivery.

Moreover, the financial health of NU’s subsidiary Public Service of New Hampshire (“PSNH”) is very much in question, potentially creating significant new liability for NSTAR and risking the ability of the merged entities to invest effectively in energy efficiency, demand response, and long-term contracts to facilitate the financing of renewable energy generation.

Under these circumstances, CLF and its members undoubtedly will be substantially and specifically affected by the outcome of this proceeding consistent

with the meaning of 220 C.M.R. §1.03(1)(b) and G.L. c. 30A, § 10.²

Accordingly, CLF respectfully asks the Department to grant this petition to intervene.

In support of its petition, CLF states as follows:

1. CLF, by and through its members, has a substantial interest in the outcome of this proceeding, including the advancement of the objectives of the Green Communities Act, St. 2008, c. 169, and the GWSA, G.L. c. 21N, c. 30 § 61. CLF respectfully submits that its intervention as a party is likely to elucidate important issues and facilitate an expeditious and just resolution of this proceeding because of our special expertise and experience in energy policy, including the renewable energy, energy efficiency, energy conservation and greenhouse gas emission reduction requirements with which NSTAR and WMECO must comply.

2. Founded in 1966, CLF is a nonprofit, member-supported organization that works to solve the environmental problems threatening the people, natural resources and communities of New England. CLF's advocates use law, economics and science to design and implement strategies that conserve natural resources, protect public health, and promote vital communities in our region. CLF has a long history of participation in proceedings before the Department with respect to electric rate plans, energy efficiency, demand response and renewable energy resources. In the face of the threat of global warming, CLF and its members have a significant

² The Department has broad discretion in determining whether to allow intervention in Department proceedings. *Boston Edison Co. v. Dept. of Public Utilities*, 375 Mass. 1, 44-46 (1978) (the Department has broad but not unlimited discretion with regard to intervenors), *cert. denied* 439 U.S. 921 (1978).

interest in the deployment of renewable energy generation, energy efficiency, demand response and other solutions that reduce greenhouse gas emissions while increasing energy security and reliability. CLF has been extensively involved in all aspects of implementation of the Massachusetts RPS, G.L. c. 25A, § 11F, which obligates electric suppliers to provide increasing amounts of renewable energy to their customers each year, and CLF long has been involved in reviewing the Massachusetts utilities' energy efficiency plans.³ CLF also is actively engaged in advocacy and litigation geared toward eliminating reliance on, and shutting down, existing coal-fired power plants in Massachusetts and the region, opposing proposals for new coal-fired generation, and ensuring that electricity needs are instead met with far preferable alternatives including energy efficiency, conservation and responsible renewable energy projects. CLF has over 1700 members in Massachusetts and has a principal place of business at 62 Summer Street, Boston, Massachusetts.

3. CLF meets the requirements for intervention set forth in 220 C.M.R. § 1.03(1). CLF and its members are substantially and specifically affected⁴ by this

³ For example, CLF participated in Docket DTE 04-115 regarding Procurement of Default (Basic) Service Power Supply for Residential and Small Commercial and Industrial Customers, and was a Limited Participant in DPU 07-64 regarding NSTAR Green. CLF previously submitted comments in connection with DPU Dockets 08-88 and 09-138, and was an intervening party in DPU 10-54 regarding a long-term Power Purchase Agreement between National Grid and Cape Wind. In addition, CLF was involved in DPU 07-50 regarding rate decoupling, and intervened in follow-on proceedings where rate decoupling was implemented in the electric and natural gas supply contexts, DPU 09-30 and 09-39. CLF also played a lead role in helping to shape and ensure enactment of the Massachusetts Green Communities Act as well as the Massachusetts Global Warming Solutions Act.

⁴ See e.g., July 9, 2010 Hearing Officer Ruling on Petitions to Intervene and Participate in DPU 10-54 at p. 14 (recognizing that CLF and other environmental organizations would be substantially and specifically affected by a proceeding regarding a long-term power purchase agreement between National Grid and Cape Wind).

proceeding and have standing pursuant to Mass. G.L. c. 30A, § 10, for reasons including the following:

a. The outcome of this proceeding, involving the proposed merger of two of the Commonwealth's largest electric and gas suppliers, can be expected to have significant impacts with respect to achieving the critical objectives of the Green Communities Act and GWSA that depend on effective compliance by NSTAR and WMECO.

b. CLF has a lengthy track record of involvement in the development of policies and programs that support responsible renewable energy projects, energy efficiency and demand response, and that are designed to confront the compelling challenge of climate change through significant reductions in greenhouse gas emissions associated with the consumption of energy including electricity, natural gas and other resources. No Massachusetts statutes are more central to this work than the Green Communities Act and GWSA.

c. In the face of the threat of global warming, CLF and its members, including members who reside in Massachusetts, will be substantially and specifically affected by ongoing reliance on carbon-intensive electric generating sources (such as the Brayton Point and Salem Harbor Station coal plants, as well as the Canal Station heavy fuel-oil fired power plant) that are most likely to have their operations and associated emissions curtailed as they are supplanted by very low

emissions and emissions-free⁵ supply-side resources that NSTAR and WMECO are required to procure pursuant to the Green Communities Act and GWSA;⁶

d. CLF has a substantial interest in ensuring that the record is fully developed to take into account the requirements of the Green Communities Act and GWSA to enable the Department to consider whether the Proposed Merger is consistent with the public interest, including “the long term strategies that will assure a reliable, cost effective energy delivery system,” G.L. c. 164, § 96. As noted above, the Joint Petition and supporting exhibits supplied by NSTAR and NU do not adequately address these issues, and CLF’s intervention will ensure that the record includes the information necessary for the Department to make its findings;

e. Recognizing the environmental, public health, economic development and other benefits of renewable energy, CLF has advocated extensively before the General Court and the Massachusetts Department of Energy Resources to deflect efforts to weaken the Massachusetts RPS (e.g., by opening up eligibility to older and less environmentally sound generating sources). CLF will be substantially and specifically affected by the Proposed Merger in light of public indications by both NSTAR and NU that they are interested in seeking to *modify* the Massachusetts RPS to allow eligibility for large hydropower resources (to benefit their joint venture

⁵ The emissions of concern include not just greenhouse gas emissions such as carbon-dioxide (CO₂) but also mercury, lead, particulate matter, SO_x and NO_x.

⁶ See, e.g., *Massachusetts v. U.S. Envtl. Prot. Agency*, 549 U.S. 497, 521-22, 525 (2007) (recognizing that the risk of harm to Massachusetts from the impacts of greenhouse gas emissions and associated climate change is real and imminent, including “precipitous rise in sea levels by the end of the century,” “severe and irreversible changes to natural ecosystems,” “increase in the spread of disease,” and a possibility of hurricanes of “increased ferocity”). In *Massachusetts v. EPA*, the United States Supreme Court held that Massachusetts had standing to challenge EPA where “the rise in sea levels associated with global warming has already harmed and will continue to harm Massachusetts.” *Id.* at 525.

with HydroQuebec) rather than simply comply with the law as written.⁷ In the event the Proposed Merger is approved, the merged entity, serving some 3.5 million customers in the New England region, would be expected to have greater political clout and thus a greater chance of successfully modifying the RPS statute. In the event the merged entity is successful in modifying the RPS to allow eligibility for large hydropower, this would significantly displace incentives and demand for more home-grown wind, solar, small-scale low-impact hydropower and other resources that are needed to meet the mandates of the RPS and the GWSA, promote electric system reliability in Massachusetts, and provide other societal benefits – e.g., through job creation.

f. CLF and its members also will be substantially and specifically affected by the Proposed Merger to the extent NU’s economic liabilities and risk exposure associated with its power generation assets will constrain the Joint Petitioners’ abilities to fully comply with the Commonwealth’s renewable energy, energy efficiency, conservation and greenhouse gas reduction mandates. NU, through its wholly owned subsidiary PSNH, owns nearly one gigawatt of aging,

⁷ See e.g., Beth Daley, “Canadian Firm Offers N.E. More Hydropower,” *Boston Globe*, October 23, 2010 at p. B-1 (“But Caroline Allen, a spokeswoman for NStar, said it is time to revisit the hydropower restriction, as well as the state’s renewable energy targets, ‘to balance the environmental concerns with economic concerns.’”); Kyle Alspach, “Northeast Utilities: Add Hydropower As Renewable Energy,” *Boston Business Journal*, October 21, 2010 (“Northeast Utilities, the Hartford-based company planning to merge with Boston-based NStar, wants authorities to amend state law so that Canadian hydropower would count toward the utility’s renewable energy quota, according to the company’s CEO.”) available at: <http://www.masshightech.com/stories/2010/10/18/daily49-Northeast-Utilities-Add-hydropower-as-renewable-energy.html>. At a minimum, despite subsequent contradictory remarks made by NU, these representations raise a red flag regarding NSTAR’s and NU’s relative commitments to their obligations under the existing RPS.

inefficient and polluting coal and oil-fired generating capacity in New Hampshire. Largely because these outdated generation units are not competitive with newer, cleaner generating resources, PSNH's rates are the highest in New Hampshire and have driven over 30% of PSNH's load to migrate to competitive supply options over the last few years. In response to data requests issued by CLF in a docket initiated by the New Hampshire Public Utilities Commission, DE 10-160 (Investigation into the Effect of Migration on Energy Service Rates), PSNH recently admitted that it expects to raise its rates by 33% over the next five years, in part to cover the costly environmental upgrades required for its power plants. In response to a data request in a separate NH PUC docket, DE 10-257, PSNH also provided data projecting that its generating fleet costs will be approximately \$110 million above market (based on Locational Marginal Pricing (LMP)) in 2011. The result has been a troubling downward spiral for PSNH, with fewer and fewer customers forced to bear the cost of operating PSNH's obsolete generating fleet. PSNH acknowledged in sworn testimony that the differential between its supply costs and wholesale LMPs is not sustainable by the company over the long term, and that statutory changes are necessary for it to pass some of these costs onto more of its customers. As one indication of PSNH's financial predicament, in an order dated December 17, 2010 the NH PUC denied PSNH's request for authorization to issue \$500 million in additional debt.⁸

⁸ NH PUC Order No. 25,178, Docket DE 10-122, PSNH Petition for Approval of Issuance of Long- and Short-Term Debt and Related Relief.

Thus, despite representations by the Joint Petitioners regarding the supposedly robust financial health of both NSTAR and NU,⁹ the truth is that the Proposed Merger risks significantly weakening the economic vitality of NSTAR and thereby reducing its ability to advance the objectives of Massachusetts law including, *inter alia*, facilitating the financing of renewable energy generation through long-term contracts pursuant to Section 83 of the Green Communities Act.

8. Because of CLF's special expertise and experience in the issues outlined above, our participation as an intervenor in this proceeding will help to elucidate the issues, develop the record in the case, and contribute to the issuance of a sound and well-reasoned final decision that is consistent with the Commonwealth's statutory mandates.

9. As an intervening party and consistent with G.L. c. 164 § 96, CLF expects to present its views, cross-examine witnesses and introduce relevant evidence regarding issues including the following:

- a. The long-term strategies of the Joint Petitioners – including inadequacies of those strategies – for assuring a reliable, cost effective energy delivery system that is fully consistent with the Green Communities Act and GWSA – including the Massachusetts RPS, the long-term contracting mandate under Green Communities Act § 83, obligations to procure all cost-effective energy efficiency and

⁹ See e.g., Exhibit JP-1 at p. 19.

conservation, and requirements to reduce greenhouse gas emissions 25% below 1990 levels by 2020 and at least 80% below 1990 levels by 2050;¹⁰

- b. Societal costs of the Proposed Merger;
- c. Anticipated effects of the Proposed Merger on economic development, particularly with respect to renewable energy;
- d. The value and urgency of action to reduce greenhouse gas emissions by, *inter alia*, unleashing the potential of offshore renewable energy;
- e. Reasonably foreseeable climate change impacts of the Proposed Merger, which must be taken into account consistent with G.L. c. 30, § 61; and
- f. The liabilities and risk exposure of NU subsidiary PSNH that, in the event the Proposed Merger is approved, are likely to affect Massachusetts ratepayers and the ability of the Joint Petitioners to meet their obligations under the Green Communities Act and GWSA.

¹⁰ G.L. c. 21N; c. 25A, § 11F; St. 2008, c. 169, § 83. *See also*, “Determination of Greenhouse Gas Emissions Limit for 2020,” released on December 29, 2010, establishing the 2020 greenhouse gas reduction mandate of 25% below 1990 levels.

The absence of any long-term contract between either of the Joint Petitioners and Cape Wind is one issue that should be explored, particularly in light of evidence that Cape Wind is needed for Massachusetts to meet its RPS and GWSA targets. The Department made the following relevant and compelling observation in the Executive Summary to its Final Order in DPU 10-54 approving a long-term PPA between Cape Wind and National Grid for half of Cape Wind’s output: “One of the many benefits that Cape Wind provides is that it will assist National Grid and Massachusetts in meeting the renewable energy requirements of the Green Communities Act, as well as the greenhouse gas emissions reduction requirements of the Global Warming Solutions Act. Meeting those greenhouse gas emission mandates will require significant investments across all sectors of the economy, and especially from the electricity sector. *We conclude that those requirements are unlikely to be met without the Cape Wind contract and the associated emissions reductions from the project.*” DPU 10-54 at xvii (emphasis added).

10. In light of the foregoing, CLF seeks to intervene in this proceeding or, in the alternative, seeks status as a Limited Participant with rights to receive copies of all pleadings as well as discovery requests and responses, and to file brief(s) in accordance with the procedural schedule established by the Department.

11. CLF requests that all notices, testimony, pleadings and correspondence pertaining to these proceedings be directed to the undersigned.

WHEREFORE, for the reasons stated above, CLF respectfully requests that the Department grant this Petition to Intervene or, in the alternative, grant Limited Participant status to CLF.

Respectfully submitted,

CONSERVATION LAW
FOUNDATION

By its attorney,

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Date: January 3, 2011

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing “Petition to Intervene of the Conservation Law Foundation” on the Service List in docket D.P.U. 10-170 in accordance with 220 CMR §§ 1.00 et seq.

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