

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

PETITION OF THE OFFICE OF : DOCKET NO. 10-12-05  
CONSUMER COUNSEL FOR A :  
DECLARATORY RULING THAT :  
THE PENDING MERGER OF :  
NORTHEAST UTILITIES AND :  
NSTAR REQUIRES APPROVAL BY :  
THE CONNECTICUT DEPARTMENT :  
OF PUBLIC UTILITY CONTROL : JANUARY 6, 2011

**PETITION TO INTERVENE AND COMMENTS OF NEW ENGLAND POWER  
GENERATORS ASSOCIATION, INC.**

New England Power Generators Association, Inc. ("NEPGA") hereby (1) petitions the Connecticut Department of Public Utility Control ("DPUC" or the "Department") to be designated as an intervenor or, in the alternative, as a participant in the above-captioned proceeding pursuant to Section 4-177a(b) of the Connecticut General Statutes ("CGS") and Section 16-1-18 of the Regulations of Connecticut State Agencies and (2) submits these written comments in response to the Department's Notice of Request for Written Comments dated December 23, 2010 (the "Notice") regarding the pending merger between Northeast Utilities ("NU") and NSTAR (the "Proposed Merger").<sup>1</sup> In support of this petition, 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.

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<sup>1</sup> 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.

2. NEPGA's member companies represent approximately 27,000 megawatts of electrical generating capacity throughout the New England region, with approximately 7,200 megawatts in Connecticut. 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.

### **Procedural Background**

3. On October 18, 2010, the Attorney General of the State of Connecticut (“AG”) petitioned the Department for review of the Proposed Merger. See Docket No. 10-10-14. On November 3, 2010, the Department established an undocketed procedure to review the Proposed Merger and scrutinize all details of the transaction.<sup>2</sup>

4. The Department maintains an undocketed database for the filing of various information by NU and NSTAR regarding the Proposed Merger and continues to use the undocketed database to solicit information from NU.<sup>3</sup>

5. On December 3, 2010, the Office of Consumer Counsel (“OCC”) filed a Petition for Declaratory Ruling requesting that the Department determine whether DPUC approval is necessary for the Proposed Merger pursuant to C.G.S. §§ 16-11, 16-43 and/or 16-47. OCC’s Petition asserts that DPUC approval is necessary for the

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<sup>2</sup> The Department noted that its review of the Proposed Merger is in the public interest, but closed the docket because, at that time, it did not believe DPUC approval was necessary under Connecticut law. See Docket Closing Action Other than Decision, at 1, Docket No. 10-10-14 (Nov. 3, 2010).

<sup>3</sup> For example, on December 23, 2010, the Department issued interrogatories to NU in the undocketed database.

Proposed Merger. On the same date, the AG filed a Petition to Intervene in the above referenced proceeding supporting OCC's Petition for Declaratory Ruling.

6. On December 15, 2010, NU filed a response to OCC's Petition asserting that DPUC approval of the Proposed Merger is not required by Connecticut law.

7. On December 23, 2010, the Department issued the Notice requesting interested parties to file written comments in the above referenced proceeding by January 6, 2011.

### **Factual Background**

8. On October 18, 2010, NU and NSTAR issued a press release announcing the Proposed Merger ("Press Release"). The Proposed Merger is characterized as a "merger of equals" resulting in a new combined entity named Northeast Utilities. The new NU (hereinafter called "NU-NSTAR") will have dual headquarters in Hartford, CT and Boston, MA and will be a "larger, stronger and more diversified regulated utility."<sup>4</sup> In its filing with the Massachusetts Department of Public Utilities ("DPU"), NU and NSTAR indicated that NU-NSTAR will have an enterprise value of approximately \$18 billion, a market cap of approximately \$10 billion and over 3.4 million customers in three states.<sup>5</sup>

9. NU-NSTAR has expansive plans to grow its business beyond what either company could accomplish individually, particularly in energy resource development and transmission, e.g., needed infrastructure investment, "to achieve energy goals

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<sup>4</sup> See *Press Release*, Attachment A to OCC Petition, at 2.

<sup>5</sup> See *Joint Testimony of James J. Judge and David R. McHale*, at 19 ("*Joint Testimony*"). The NU/NSTAR filing in Massachusetts is available on the Department's website at <http://www.dpuc.state.ct.us/DPUCUndocketed.nsf/d9991fb8f7ca7e3e852577cb0068bf05/85256a63004def96852577ea00566ea0?OpenDocument>.

established by . . . the New England region.”<sup>6</sup> Indeed, in its Proposed Merger presentation, NU-NSTAR emphasized its definitive plan to aggressively expand development of renewable and other energy resources and transmission infrastructure.<sup>7</sup>

### Intervention Request

10. 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 Connecticut and in the region.

11. 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 standard service (“SS”) and last resort service (“LRS”) suppliers. 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, provide significant benefits to consumers by allowing for competition and create an open transparent process with lower costs to consumers.

12. Given its members’ significant role as active competitive market participants, as noted above, and its ongoing relationships (as a supplier, customer and competitor) with NU and NSTAR, NEPGA and its members have a direct interest in the Department’s review of the Proposed Merger. Specifically, NEPGA and its members

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<sup>6</sup> *Joint Testimony*, at 21.

<sup>7</sup> See *NU-NSTAR Proposed Merger Presentation*, at 4, 6, 8 (Oct. 18, 2010), available at [http://www.nu.com/investors/presentations/NU\\_NST\\_Investor\\_Presentation.pdf](http://www.nu.com/investors/presentations/NU_NST_Investor_Presentation.pdf) (“*Merger Presentation*”).

will be impacted by changes in policy and in the competitive marketplace that may occur as a result of the Proposed Merger.

13. Thus, NEPGA and its members, as wholesale generators, competitive market participants, suppliers and customers have an interest in ensuring that any determination regarding the Proposed Merger is reasonable, does not adversely impact the competitiveness of a robust competitive 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 that the Department designate it as an intervenor or participant in this proceeding.

14. All notices and correspondence in this proceeding should be directed to:

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### Comments

15. This is an important proceeding. The merger of NU and NSTAR will combine two neighboring utilities to create a new energy provider controlling a large share of transmission and distribution business in Connecticut and in New England with stated plans to develop large scale energy generation and deliver electricity into the largest load centers in New England. This merger will expand the already extensive footprints of NSTAR and NU in Connecticut and in the region.<sup>8</sup> The impact of this new company cannot be underestimated—a new entity will emerge, with combined capital,

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<sup>8</sup> The merger will create the largest utility in the region, with over 2 million customers in Connecticut load centers alone. *Merger Presentation*, at 4, 5, 6.

resources and influence, to replace what had been NU and NSTAR individually. The new company will be the dominant transmission and distribution player in ISO-NE markets and will have the potential to undermine competitive markets, competition, and established competitive practices that have evolved in the restructured ISO-NE markets for over a decade.

16. If the Department determines to undertake review of the merger in the instant case, the Department must weigh many factors, including impacts on the competitive markets, competition, system reliability, rates, and the public interest under C.G.S. § 16-47.<sup>9</sup> Notably, for example, the Department has considered as part of a public interest review whether a merger would result in the loss of competition in retail electric markets, increase the concentration of control in combined distribution networks and erode competition in electricity markets.<sup>10</sup>

17. Indeed, in a similar case involving the proposed merger of large, neighboring utilities, the Department acknowledged its responsibility to promote and maintain effective competition in Connecticut's restructured electric industry.<sup>11</sup> The Department recognized the positive linkage between a robust competitive marketplace and consumers' interests and the need to ensure that sufficient safeguards are in effect

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<sup>9</sup> NEPGA's interests are wholly consistent with the elements of a § 16-47 and public interest review: (i) electric system reliability; (ii) electric distribution systems; (iii) competition; (iv) market power; (v) and customers. NU-NSTAR has the burden of proof to demonstrate that the merger is in the public interest. See, *Joint Application of Consolidated Edison, Inc. and Northeast Utilities for Approval of Change of Control*, Final Decision, at 100,102-112, Docket No. 00-01-11 (Oct. 19, 2000) ("*ConEd Decision*").

<sup>10</sup> *ConEd Decision*, at 109; See also *Joint Application of UIL Holdings Corp. and Iberdrola USA, Inc. for Approval of a Change of Control of Conn. Natural Gas Corp. and The Southern Conn. Gas Co.*, Final Decision, p. 23, Docket No. 10-07-09 (Nov. 10, 2010).

<sup>11</sup> *ConEd Decision*, at 104.

to serve the public interest and protect consumers without harm to the competitive marketplace.<sup>12</sup>

18. Although not all impacts may be identified at this early stage, there are indications that NU-NSTAR may seek to implement policies that will significantly and adversely impact NEPGA, its members and Connecticut electric customers. For example, NU-NSTAR's plans to develop competitive energy resources will also directly impact competitive development of such resources and, the cost of such development as ultimately borne by ratepayers.<sup>13</sup> In addition, 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 ultimately impact costs borne by and rates paid by customers.<sup>14</sup> Notably as well, NU-NSTAR's plans with respect to SS and LRS procurement will also directly impact customers as it will affect SS and LRS rates.<sup>15</sup> Moreover, among other things, the merger may impact system reliability, competition, fuel supply and diversity, all of which will impact customers.<sup>16</sup>

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<sup>12</sup> In the *ConEd Decision*, the Department noted that there could be circumstances that render a merger not in the public interest even though the acquiring party is suitable as required under C.G.S. § 16-47. At 17-18.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Merger Presentation*, at 6.

<sup>15</sup> There are no materials available indicating how NU-NSTAR will address competitive procurement of SS and LRS supply going forward. Therefore, NEPGA does not have any information regarding any possible impacts on such procurement process at this time.

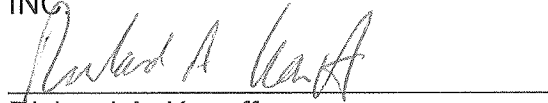
<sup>16</sup> *Joint Testimony*, at 15-16.

**Conclusion**

For all the foregoing reasons, the Department should (1) grant NEPGA intervenor status in this proceeding and (2) ensure that the Proposed Merger will not harm competitive electricity markets in Connecticut.

Respectfully submitted,

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