



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

April 4, 2011

Via First Class Mail And Electronically

Luly Massaro
Clerk
Division of Public Utilities & Carriers
89 Jefferson Boulevard
Warwick, RI 02888

**Re: Complaint of Benjamin Riggs Relating to
Town of Portsmouth Generating Facility-
Net Metering**

Dear Ms. Massaro:

Enclosed for filing please find an original and nine (9) copies of the Objection to the Motion to Intervene of Nexamp, Inc. of the Advocacy Section of the Division of Public Utilities & Carriers for filing in the above-referenced proceeding.

Thank you for your attention to this matter.

Sincerely,

Jon G. Hagopian (# 4123)
Special Assistant Attorney General
Tel. (401) 274-4400 ext. 2231
Fax (401) 222-3016

Encl.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES & CARRIERS

IN RE: COMPLAINT OF BENJAMIN RIGGS)
RELATING TO TOWN OF) Docket No. D-10-126
PORTSMOUTH GENERATING)
FACILITY- NET METERING)

**OBJECTION OF THE ADVOCACY SECTION
OF THE DIVISION OF PUBLIC UTILITIES AND CARRIERS
TO THE MOTION TO INTERVENE OF NEXAMP, INC**

Now comes the Advocacy Section of the Division of Public Utilities and Carriers (the “Division”) and hereby objects to the Motion to Intervene of Nexamp, Inc.. Nexamp has failed to set forth reasons why the Advocacy section cannot adequately represent their interests. Furthermore, the motion is based upon a generalized public interest which is essentially unparticularized in contravention of the requirements of the Division’s Rules of Practice and Procedure rule 17(c). For the foregoing reasons the Advocacy Section respectfully requests that the hearing officer deny said motion.

Nexamp’s Motion to Intervene

On March 23, 2011 Nexamp filed a Motion to Intervene with the Division. Nexamp’s stated reasons for intervention were that their “interest is directly affected by this proceeding and its participation in the proceeding may be in the public interest.” In addition they state that their intervention “will lead to a fuller development of the record because Nexamp has an interest in the outcome of this proceeding not adequately represented by any other party.” The Motion to Intervene was also submitted by an attorney who is not a member of the bar of the State of Rhode Island and who has not obtained pro hac vice status as of late.

Standard of Review

In ruling upon a motion to intervene the Division's Rules of Practice and Procedure, Rule 17(b), requires that the moving party demonstrate that they either have one of the following: (1) a right [to intervene] conferred by statute, (2) an interest which may be directly affected and which is not adequately represented by existing parties and as to which...[the movant] may be bound by the Division's action in the proceeding. The following may have such an interest: consumers served by the applicant, defendant, or respondent and holders of securities of the applicant, defendant or respondent, or (3) any other interest of such nature that the movant's participation may be in the public interest.¹

Similarly, the Division's Rules Practice and Procedure, Rule 17(c) requires that the motion to intervene shall set out clearly and concisely facts from which the nature of the movant's alleged right or interest can be determined, the grounds of the proposed intervention, and the position of the movant in the proceeding.²

Argument

It is the Advocacy Section's position that Nexamp has no right to intervene conferred by statute and has not articulated any such statutory right. The generalized interest of Nexamp is currently represented by a party to this proceeding and it has offered no evidence to support its contention that its interests will not be represented by intervenor's presently a party to this action.

The Advocacy Section is already a party to this proceeding and represents the public interest. "The [d]ivision, which is represented by the Department of the Attorney General in all administrative and legal proceedings, is statutorily charged with representing the interests of the

¹ Division of Public Utilities and Carriers Rules of Practice & Procedure 17(b).

² Division of Public Utilities and Carriers Rules of Practice & Procedure 17(c).

public, as its advocate, in rate proceedings before the [PUC].” In re: Kent County Water Authority Change Rate Schedules, 996 A.2d 123, 126 (R.I.,2010) *quoting* In re: Island Hi-Speed Ferry, LLC, 746 A.2d 1240, 1244 n. 6 (R.I. 2000). Nexamp has provided no evidence as to why their interests and those of the public will not be satisfactorily represented by the Advocacy Section. Nexamp may proffer public comment, which appears more appropriate here than granting it intervenor status.

Nexamp also asserts that granting them intervenor status would be in the public interest.

In determining whether an intervention is in the public interest the Division must find that their

individual interest warrant recognition and protection in furtherance of the general welfare of the public...the Division must also balance several related factors, specifically, whether the Division ultimately has the authority to grant the relief requested, whether the Movants may more effectively pursue their respective interest in other forums and whether the intervention(s) would unduly delay or prejudice the adjudication of the rights of the Petitioners and other parties.

City of East Providence v. Narragansett Electric Co., 2006 WL 1660761, *4 (R.I. Super. 2006).

Nexamp has failed to articulate any specific interest that would be directly affected by the Division’s decision. A mere statement that the outcome of this proceeding will have an effect on “existing and potential projects” is insufficient. This is a generalized assertion which is unsubstantiated. The matter before the Division is a limited question relating to the transaction between National Grid and the Town of Portsmouth and should be limited in scope thereto.

Respectfully submitted,

ADVOCACY SECTION,
STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES
AND CARRIERS

By its Attorney,



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April 4, 2011

CERTIFICATE OF SERVICE

I certify that a copy of the within motion was served by electronic mail to all persons listed on the service list for Docket No. D-10-126 on the 4th day of April, 2011.

