

status. On May 15, 2015, the Department issued the Ruling. Also on May 15, 2015, NEES submitted a motion for leave to answer the response of Columbia and answer in support of the Petition (the “Answer”). The Ruling was issued before the Answer, three days after the response filed by Columbia. In the Ruling, the Department denied the Petition on the grounds that NEES’ interests were not sufficient to establish that NEES is substantially and specifically affected by the proceeding and that the Attorney General, the Department of Energy Resources and the Conservation Law Foundation (“CLF”), who were admitted as intervenors in the proceeding can adequately represent NEES’ interests. Ruling at 8. For the reasons set forth in this Appeal, the Petition, and the Answer, the Ruling was inconsistent with the Department’s standard for intervention because NEES is substantially and specifically affected by the proceeding and it is not adequately represented by any other party to the proceeding.

II. STANDARD OF REVIEW

The Department is examining whether the Precedent Agreement is consistent with the public interest. Investigation by the Dep’t of Telecommunications and Energy Pursuant to G.L. c. 164, § 94A into the Petition of The Berkshire Gas Company, D.T.E. 04-35, at 8 (2004) (“Berkshire Gas”). In making such examination, Columbia must show the Precedent Agreement “(1) is consistent with the company’s portfolio objectives and (2) compares favorably to the range of alternative options reasonably available to the company and its customers including releasing capacity to customers migrating to transportation, at the time of the acquisition or contract negotiation.” Id. In addition, the Department will determine whether the Precedent Agreement satisfies Columbia’s non-price objectives, including flexibility of nominations and reliability and diversity of supplies. Id.

The Department may “allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose.” G.L. c. 30A, § 10(4); see 220 C.M.R. § 1.03(1). In considering a petition to intervene or participate, a Hearing officer may consider, among other factors:

The interests of the petitioner, whether the petitioner’s interests are unique and cannot be raised by any other petitioner, the scope of the proceeding, the potential effect of the petitioner’s intervention on the proceeding, and the nature of the petitioner’s evidence, including whether such evidence will help to elucidate the issues of the proceeding, and may limit intervention and participation accordingly.

Hearing Officer Ruling on Petitions to Intervene, D.P.U. 15-39, at 7; Boston Edison Co., D.P.U. 96-23, at 10 (citations omitted).

III. ARGUMENT IN FAVOR OF NEES’ INTERVENTION IN PROCEEDING

The Department denied the Petition on the grounds that NEES’ interests were not sufficient to establish that NEES is substantially and specifically affected by the proceeding and that the Attorney General, the Department of Energy Resources and CLF, who were admitted as intervenors in the proceeding can adequately represent NEES’s interests. Ruling at 8. NEES’ interests, as a representative of a large group of landowners and ratepayers impacted by the present matter are substantially and specifically affected by the proceeding. NEES represents ratepayers and landowners with a specific interest in ensuring that the Precedent Agreement and the available alternatives are analyzed in light of the regulatory impacts on NED and with regard to the economic, environmental, and other impacts of the Precedent Agreement of which NEES, though its other advocacy activities, possesses valuable expertise which will be of use to the Department.

Additionally, the Department issued the Ruling without the benefit of the Answer which was filed in accordance with Department regulations and would have provided additional information valuable to the Department in ruling on the Petition.

A. The Answer was Timely Filed and Should have Been Considered by the Department

The Department's notice with respect to the schedule submitting petitions to intervene did not contemplate the submission of responses to oppositions to petitions to intervene. According to the Department's regulations, "[e]xcept where a different period is specified, an answer shall be filed within 14 days after service of the document to which the answer is directed. 220 C.M.R. § 1.04(2). The regulations do not provide for any time limit with respect to answers to oppositions to petitions to intervene, however they do provide that "[a] party may file an answer to a petition no later than five days after the petition is filed" 220 C.M.R. § 1.03(1)(d). Under either a five day or a fourteen day requirement, the Answer was timely filed and should have been considered by the Department. See 220 C.M.R. §§ 1.03(1)(d), 1.04(2).

B. NEES Will be Substantially and Specifically Affected by the Proceeding

Uniquely, NEES, through its founding members, represents over 101,850 individuals in The Commonwealth of Massachusetts and collectively owns or hold conservation restrictions on over 46,211 acres of land in the Commonwealth. This covers all of the cities and towns served by Columbia. In the Petition and the Answer, NEES established that it was founded to represent its members in providing energy infrastructure analysis and advocacy regarding the economics of energy projects and transactions in the Northeastern United States, including NED and the effects of the Precedent Agreement thereon. NEES represents individuals and entities who will be subject to any change in rates as a result of the Precedent Agreement as well as landowners and rate payers within Columbia's service territories, including State Representative Michael

Brady, an elected member of The Commonwealth of Massachusetts House of Representatives, in his capacity representing the Ninth Plymouth district, which is comprised of Brockton (Ward 2, Ward 3: Precincts A, B, C, Ward 4: Precincts A, D, Ward 5: Precinct A, Ward 7: Precincts A, B), whose interests will be substantially and specifically affected by the proceeding.

Representatives of large groups of ratepayers, such as NEES, are substantially and specifically interested in proceedings such as this one which could impact the cost of energy for their members. See Robinson, 416 Mass. 668 at 674. In Robinson, the court noted that groups representing large groups of ratepayers had been admitted to the proceeding as full intervenors. 416 Mass. 668 at 674. Representatives of multiple ratepayers, have a substantial and specific interest in ensuring that the Precedent Agreement compares favorably to the available alternatives and that the Precedent Agreement satisfies Columbia's non-price objectives. See Berkshire Gas, D.T.E. 04-35, at 8. In Robinson, State Representative Christopher Hodgkins was permitted to intervene in the matter in full. 416 Mass. at 670 n.2. Rep. Brady, a member of NEES in his elected capacity, has a substantial and specific interest in ensuring his constituents, who reside in an area serviced by Columbia, have access to affordable energy service. NEES exceeds standards for being admitted to the proceeding as full a intervenor.

In addition, the proposed route of NED, which will provide gas contracted for by the Precedent Agreement, will cross numerous communities in which NEES represents landowners and will affect the property interests of such landowners. The landowners in Martorano v. Department of Public Utilities, a citizens group representing impacted landowners in a community affected by a pipeline project was allowed to intervene in a Department proceeding. 401 Mass. 257, 260 (1987). Landowners have a substantial and specific interest in ensuring that

the analysis of the favorability of available alternatives to the Precedent Agreement takes into account the impacts the Precedent Agreement will have on landowners. See Id.

Finally, the Department's consideration of the Precedent Agreement could impact proceedings with respect to the approval of NED, along with related matters, before the Federal Energy Regulatory Commission and the U.S. Department of Energy to which NEES is an active party or anticipates to be an active party. NEES has also demonstrated in the Petition and the Answer an interest in NED and the effects of the Precedent Agreement thereon. See Ruling at 7 (stating that CLF was substantially and specifically affected based on its "interest in the proposed pipeline, its regional implications, and the Precedent Agreement's relationship thereto"). As a result of the foregoing, NEES has established that the proceedings with respect to the Precedent Agreement substantially and specifically affect the interests of NEES and its members.

C. The Interests of NEES Cannot be Adequately Represented by Any Other Party

As a result of its activities before the Federal Energy Regulatory Commission and other state's regulatory bodies, NEES possesses valuable expertise with respect to energy infrastructure and transactions and the environmental and economic impacts of the same. NEES' expertise in this matter cannot be replicated by another party to the proceeding, and as a result, if NEES is not granted leave to intervene, its interests in the matter will not be adequately represented causing harm to NEES. In addition, NEES believes such information, including expert testimony with respect to energy agreements, will be valuable information for the Department in its consideration of the available alternatives to the Precedent Agreement as well as whether or not the Precedent Agreement is consistent with Columbia's non-price objectives. See Ruling at 7 (stating that CLF's knowledge "could elucidate important issues in the proceeding"); Berkshire Gas, D.T.E. 04-35, at 8. NEES is uniquely situated to represent its and

its members substantial and specific interest in this matter, including those of Rep. Brady in his elected capacity to the General Court. NEES was founded for the purposes of uniquely representing its members' interests before regulatory bodies, as its founders had not received satisfactory representation from other entities.

In view of the aforementioned, the Commission should view NEES not only as an organization representing a large group but also as one with and with members who have unique interests that cannot be represented by any other petitioner. Further, NEES, by virtue of its extensive involvement in energy infrastructure, policy, and transactional proceedings in multiple jurisdictions, including the FERC and the U.S. Department of Energy, is substantially and specifically affected by this proceeding. NEES' interests are directly connected to this proceeding, its interests and members are unique and cannot be represented by any other petitioner. Additionally, in view of NEES' involvement with an array of other matters, it is able to provide unique expertise that will help to elucidate the issues herein. See: D.P.U. 10-54, p. 5.

To emphasize, NEES, unlike any other petitioner in this proceeding, uniquely represents numerous large, conservation land owners and rate-payers, who are substantially and specifically affected by this proceeding. NEES has interests that cannot be adequately represented by the Attorney General, DOER, or CLF. See: D.P.U. 10-54, p. 8. NEES does have the right to speak for its members, including the large, conservation land owners and Representative Brady, in his elected capacity, in this proceeding.

For the foregoing reasons, the Petition was consistent with the Department's standard for intervention and should have been granted by the Department. See G.L. c. 30A, § 10(4); 220 C.M.R. § 1.03(1); Robinson, 416 Mass. 668 at 674; Martorano 401 Mass. at 260; Berkshire Gas, D.T.E. 04-35, at 8.