



**Public Service
of New Hampshire**

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A Northeast Utilities Company

Robert A. Bersak
Assistant Secretary and
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**CONFIDENTIAL
MATERIAL
IN COMM FILE**

April 26, 2011

Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 Fruit Street, Suite 10
Concord, New Hampshire 03301

**Re: *Public Service Company of New Hampshire
RSA 366:3 Affiliate Contract Filing***



Dear Secretary Howland:

Pursuant to RSA 366:3, Public Service Company of New Hampshire (“PSNH”) is making a curative filing of contracts with competitive affiliates. The transactions included in this filing were not timely filed per the requirements of RSA 366:3. These filings were not made because these transactions took place in the normal course of business, without any awareness or participation of PSNH’s legal or regulatory personnel, and those personnel involved in these transactions were unaware of the requirements of RSA 366:3.

OVERVIEW

The existence of the transactions covered by this filing came to light as a result of a contract awarded to PSNH’s affiliate E.S. Boulos Company, which was timely filed with the Commission and docketed as Docket No. DA 10-123. When Company management was informed that an RSA 366:3 affiliate transaction filing was required in that instance, the question was raised why other transactions with E.S. Boulos did not need such a filing. Management was informed that such filings were indeed required, and Commission staff was immediately informed of the situation.

Northeast Utilities Service Company's Purchasing function searched its records to find all transactions between PSNH and affiliated NU companies for which affiliate transaction filings may be required by RSA 366:3. That investigation revealed that such transactions took place with four affiliated companies, dating back to April, 2000. The four affiliated companies are:

- E.S. Boulos Company
- Northeast Generation Services Company
- NGS Mechanical, Inc.
- Woods Network Services, Inc.

E.S. Boulos Company is headquartered in Westbrook, Maine and was acquired by Northeast Utilities Enterprises, Inc. (NUEI) in 2001. E.S. Boulos offers comprehensive design/build services for both high and medium voltage electrical projects. During the period January 21, 2003 to date, and excluding the transaction that is the subject of Docket No. DA 10-123, E.S. Boulos was a party to 24 contract awards to perform services for PSNH. E. S. Boulos Company remains active and in good standing with the New Hampshire Secretary of State.

Northeast Generation Services Company (NGS) is an unregulated company started in 1998 from the personnel of the former NU Fossil/Hydro Production Department. This company was formed to provide engineering, design, environmental, maintenance, construction and operational services for power plants, utilities, municipalities and large industrial customers. During the period April 14, 2000 to August 17, 2006, Northeast Generation Services Company was awarded 103 purchase orders to perform services for PSNH. Northeast Generation Services Company informed the New Hampshire Secretary of State on October 24, 2008, that it had ceased doing business in New Hampshire.

NGS Mechanical, Inc. is a company formed by NGS in 2001 to provide professional contracted and union trade labor to support the engineering, construction and operational projects NGS had competitively been awarded. One purchase order dated April 4, 2003, was awarded to NGS Mechanical on behalf of PSNH. NGS Mechanical informed the New Hampshire Secretary of State on October 24, 2008, that it had ceased doing business in New Hampshire.

Woods Network Services, Inc was an electrical contractor purchased by Northeast Generation Services Company in 2002 that specialized in commercial/industrial/residential electrical projects of medium to low voltage. During the period January 23, 2003 through November 1, 2005, Woods Network Services, Inc. was awarded 16 purchase orders to perform services for PSNH. NU divested its interest in Woods Network Services, Inc. on November 22, 2005.

The contract documents are attached hereto in Appendix A. As noted above, these affiliate transactions were entered into in the normal course of business, pursuant to standard purchasing business practices. In addition, through early 2008, the cost of the services provided by these affiliated companies to PSNH was limited by federal law under the Public Utility Holding Company Act of 1935; subsequently, the FERC has imposed pricing limitation under the Public Utility Holding Company Act of 2005. Both of these topics will be discussed in more detail, below.

PURCHASING PROTOCOL

A description of the applicable purchasing protocol may aid the Commission's understanding of this filing. Northeast Utilities Service Company ("NUSCO") provides procurement services for PSNH. NUSCO's Corporate Purchasing Department ("Purchasing") is authorized to negotiate and issue contracts for materials, goods and services. Purchasing is responsible for the proper conduct and conclusion of all contract negotiations in connection with procurement activities including qualification of suppliers, obtaining bids, bid evaluation, bid selection, etc. Since it is the ultimate objective of PSNH to safely, reliably and economically deliver energy to its customers, the Purchasing Department's function is designed to assure that the NU system companies receive a continuing, reliable supply of their requirements of equipment, materials and supplies, construction and services at economic costs which will ensure quality, reliability, service and availability. To this end, Purchasing works in strict accordance with written procurement objectives, policies and procedures. These documents are attached hereto as Attachments 1 and 2.

As a need is identified by PSNH for any particular equipment, material or service, Purchasing will take the necessary actions, such as the issuance of purchase orders, formal contracts, or releases against blanket orders. Beginning in 2006, to meet the projected high volume of engineering and construction work that was required to fulfill the needs of the Transmission and Distribution Groups in the NU system, Purchasing established multi-year Contractor-of-Choice ("CoC", also referred to

as Constructor-of-Choice) contracts with prequalified vendors to work in substations and on the transmission and distribution power lines. These CoC contracts were written for engineering, substation and overhead line construction projects in Connecticut, Massachusetts and New Hampshire. E.S. Boulos, an affiliated company of Northeast Utilities, was one of six contractors awarded a CoC contract for substation work for PSNH. The CoC Contracting approach is described below in more detail. NUSCO also has established Engineer-of-Choice (“EoC”), and Project Manager of Choice (“PMoC” contracts); however, there are no affiliated companies currently used for this type of work for PSNH. PSNH’s Generation group does not issue any work using the CoC program.

Except where long-term blanket contracts are in existence (none of which are issued to affiliate companies), other project work having a value of over \$50,000 is typically competitively bid by Purchasing via a secured web-based procurement system called “eSourcing”. The bid list is developed by Purchasing with input provided by PSNH functional personnel. Typical criteria for selection of bidders for the bid list includes successful past performance of previous jobs, availability of qualified supervision and labor to perform the work, competitiveness from previous RFPs, safety performance and ability to reach mutually acceptable terms and conditions. There are no separate set of rules or screening tools used for qualifying affiliated companies.

Contractor-of-Choice Parameters

CoC contracts are three-year agreements (potentially extended to a fourth year at NU’s option) that are executed with prequalified contractors. Under the CoC program, these prequalified contractors are awarded work by PSNH or other system companies for time and material work valued below \$1million and within parameters established by Purchasing.

Each CoC contract includes a Master Service Agreement (“MSA”) which establishes the commercial terms and conditions, billing rates and markups that would be utilized for individual projects. Each time a need arises for project work, a CoC contractor may be issued a work release. If the estimate of the cost of the work is between \$500,000 and \$1,000,000, a Project Specific Agreement (“PSA”) is also issued. Work releases and PSAs clearly describe the technical, schedule and special requirements of the work. PSAs usually describe the requirements in more detail. Releases and PSAs are issued within the following parameters:

| Value of Release | Parameters |
|----------------------------|--|
| <\$50,000 | Award either fixed price or T&M on a Work Release |
| \$50,001 - \$500,000 | Work Release only required for T&M work, Bid process required for fixed price work |
| \$500,000 - \$1,000,000 | PSA required Work Release only required for T&M work, Bid process required for fixed price work |
| > \$1,000,000 | Separate RFP must be issued. PSAs will be issued after competitive bidding takes place (either firm price or T&M) |

Since July 1, 2007, competitive bidding is required on all Purchase Orders/Contracts valued over \$50,000 unless a blanket order/CoC agreement is in place. Prior to this date the competitive bidding threshold was \$25,000. Since July 2004, all requests for bids (“RFBs”) are issued via electronic web-based system “Frictionless” (since changed to “eSourcing”). Prior to July 2004, RFBs were issued by email or paper mail.

Responses to an RFB are reviewed and evaluated by the project team only. For small projects, the project team might consist of a Buyer from Purchasing and a representative from the business unit. For larger projects, additional individuals may be added to provide input in their areas of expertise (legal, safety, technical specialists, treasury, insurance, etc.).

Sole Sourcing of a contract is only allowed when the user group fully justifies the need to work with a specific vendor. See the report attached hereto as Attachment 3 for the number of sole-sourced contracts awarded to vendors similar to E. S. Boulos since 2001.

PRICING RESTRICTIONS

Until April 1, 2008, in order to comply with restrictions imposed by federal law all contracts awarded to affiliates were written on a “time and materials” basis only. Under the Public Utility Holding Company Act of 1935 (the “‘35 Act”), affiliated companies within a registered holding company system were prohibited from making or performing contracts for the sale of goods or

performance of services "at more than cost." (Securities and Exchange Commission '35 Act Rule 90).

In 2005, the '35 Act was repealed by the Energy Policy Act of 2005 ("EPAct 2005"). In December 2005, FERC issued Order No. 667 which addressed the repeal of the '35 Act and implemented the Public Utility Holding Company Act of 2005 ("PUHCA 2005") through amendments to its regulations contained in Title 18 of the Code of Federal Regulations (CFR). In Order 667, FERC reviewed the '35 Act requirements of affiliate pricing and determined that it would not require "any entities that are currently using the SEC's 'at-cost' standard for traditional centralized service companies to switch to" the FERC's "market" standard. With respect to traditional, centralized service companies that used the "at cost" standard, the FERC stated that it would apply a presumption that "at cost" pricing of the non-power goods and services they provide to affiliate public utilities is reasonable.

The FERC also retained its "market" standard for non-power goods or services transactions between service companies that are special-purpose companies (such as a fuel supply company or a construction company) and public utilities. The order was silent on transactions between a utility and a non-utility affiliate that is not a special purpose service company; however, section 366.6 of Title 18 of the CFR, as amended by PUHCA 2005, provided that a company may continue to engage in activities or transactions authorized under the '35 Act prior to February 8, 2006, "until the later of the date such authorization expires or December 31, 2007, so long as that person continues to comply with the terms of such authorization."

In February 2008, FERC issued Order No. 707. That Order recognized the gap in pricing for transactions between a utility and a non-utility affiliate that is not a special purpose service company, and clarified the pricing standards. FERC Order 707 amended the FERC regulations at 18 CFR Part 35 to provide, among other things, that a franchised public utility may not purchase or receive non-power goods and services from a non-utility affiliate at a price above market. This was the first time the FERC rules specifically addressed transactions with "non-utility" affiliates. Under the Order, a "non-utility" affiliate would include any affiliate that is not in the power sales or transmission business, e.g., a coal mining company, construction company, real estate company, energy-related

technology company, communications systems company, among others. FERC Order No. 707 became effective on April 1, 2008.

Applying this history to the affiliate transactions included in this filing, until April 2008, E.S. Boulos Company; NGS Mechanical, Inc.; Northeast Generation Services Company; and, Woods Network Services, Inc. – all non-utility affiliates that were not special purpose service companies -- were required to charge affiliates, including PSNH, using the “at cost” standard. With the issuance of FERC Order 707 and the amendments to the FERC regulations set forth therein, these non-utility affiliates were limited to market price for non-power goods and services.

COMPARATIVE DATA

It may be helpful to the Commission to provide some comparative data to put the affiliate transactions included in this filing into perspective. Details of the 2006 and 2009 Contractor-of-Choice solicitation processes may provide such comparative insights:

CoC Bid Process (RFX-00148-2006 PSNH Substation)

2006 RFP:

In order to be accepted as a prequalified bidder, each potential bidder was required to submit a complete history of their company including a resume of previous projects, resumes of key project personnel, safety performance records over the previous three years and financial statements. Previous work history with NU was also considered. Once this data was submitted, a qualified bidders list was established. After review of all of prequalification materials, fifteen (15) bidders were selected for the bidders list for PSNH substation work and were included in the RFP process; eight (8) submitted bids and six (6) were awarded CoC Contracts. These CoC contracts were awarded to:

- Cianbro Corporation
- E.S. Boulos
- MJ Electric
- McPhee Electric
- IC Reed
- PAR Construction

2009 RFP:

Utilizing the same process as described for the 2006 RFP, additional CoC contracts have been issued for substation work for PSNH. In addition the six listed above, CoC contracts have also been issued to the following:

- Evans Line Construction
- State Electric
- SM Electric

The ten largest vendors that provided services to PSNH similar to those of E.S. Boulos Company over the period of 2001 to present were paid in the aggregate \$127.3 M. Of this, E.S. Boulos was paid \$10.1 M, making it fifth of the ten vendors. More detailed information is contained in Attachment 4 hereto.

We do not have data regarding the total number of solicitations that a particular vendor (affiliate or non-affiliate) had the opportunity to bid on and either chose not to submit a bid, or did not win the resulting contract.

CONFIDENTIALITY

Some of the accompanying contracts contain confidential, commercial, and financial information as defined in RSA 91-A:5, IV; such as specific pricing. PSNH is making this filing subject to the attached Motion for Confidential Treatment (Attachment 5). PSNH is supplying the Commission with redacted versions of the submission with the confidential information removed, as well as unredacted copies of the confidential material clearly identified in a separate envelope.

A copy of this filing including the unredacted version of the commercial documents is being provided to the Office of Consumer Advocate pursuant to an existing confidentiality agreement.

REQUEST FOR WAIVER OF FILING REQUIREMENT

Due to the voluminous nature of this filing, pursuant to Rule Puc 201.05 PSNH requests a waiver of the filing requirements set forth in Rule Puc 203.02 which calls for the provision of seven copies of all documents. PSNH is providing an electronic copy of the filing, and has discussed this matter with Staff and the Commission's Secretary.

CONCLUSION

In conclusion, it should be noted that as a result of this filing, appropriate NU and affiliate company personnel have been informed and trained regarding the requirement for timely reporting of affiliate contracts for services entered into by NU entities with PSNH.

Very truly yours

A handwritten signature in black ink, appearing to read "Robert A. Bersak", written in a cursive style.

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

Attachment 1

Attachment 2

Attachment 3

Attachment 4