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PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petitions for Approval of Renegotiated Power Supply Arrangements

Order Reconsidering Confidentiality Determinations

O R D E R N O. 23,870

December 13, 2001

These proceedings began on April 19, 2001 when Public Service Company of New Hampshire (PSNH) and Edison Mission Marketing and Trading (EMMT) filed with the New Hampshire Public Utilities Commission (Commission) petitions seeking approval of renegotiated power purchase arrangements with three wood-fired power plants: Whitefield Power and Light Company (Docket No. DE 01-089), Bio-Energy Corporation (Docket No. DE 01-089) and Hemphill Power and Light Company (Docket No. DE 01-091). The Commission approved settlement agreements in the Whitefield and Bio-Energy dockets, see Order Nos. 23,840 (November 9, 2001) and 23,816 (October 19, 2001), respectively, and also separately approved arrangements whereby the cost of terminating the previously effective power contract with Whitefield Power and Light will be "securitized," thereby reducing ratepayer costs, see Order No. 23,859 (December 6, 2001). By letter filed on November 16, 2001, PSNH and EMMT indicated that the proposed transaction involving Hemphill Power and Light would not be consummated and, therefore, they asked that Docket No. DE 01-091

be closed without further action by the Commission.

The complete background and procedural history of these proceedings is recited in the above-referenced orders as well as in the Pre-Hearing Conference Order issued jointly as to all three dockets, Order No. 23,763 (August 23, 2001). That information will accordingly not be repeated here, except as directly relevant.

This Order concerns the motions for confidential treatment that PSNH and EMMT have filed in each of these dockets pursuant to the New Hampshire Right-to-Know Law, RSA 91-A. Some of them have already been decided in favor of PSNH and EMMT. See *id.*, slip op. at 15-19. Others were the subject of Commission deliberation on October 18, 2001, although no Order ever issued.¹

As noted in Order No. 23,763, Commission determinations as to the confidential treatment of documents filed with the agency are subject to the Commission's ongoing authority, on its own motion or on the motion of its Staff as well as any party or member of the public, to reconsider the decision if circumstances so warrant. See *id.* at 22. This reflects an awareness that (1)

¹ The October 18, deliberations took place in the context of the consideration of certain recommendations submitted by Hearings Examiner Edward N. Damon in connection with then-pending confidentiality motions as well as motions to compel discovery. We treat the discovery motions as moot, given the approved settlement agreements in Docket Nos. DE 01-089 and 01-090 and the withdrawal of the petition in Docket No. DE 01-091.

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such motions are typically decided by the Commission in circumstances where persons with an interest in public disclosure of documents are not participating, and (2) circumstances in connection with a particular docket can and do change in ways that can make disclosure of previously confidential documents appropriate under applicable law. See *Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540, 552-53 (1997) (describing required balancing test involving asserted private interests and public's interest in disclosure). For the reasons that follow, we deem it necessary to exercise that reconsideration authority here, based on changed circumstances.

The Commission conducted a hearing on October 23, 2001 in Docket No. DE 01-089 to consider the proposed Settlement Agreement concerning the renegotiated arrangements with Whitefield Power and Light. During that hearing, the Office of Consumer Advocate (OCA) read into the record an article from the October 23, 2001 edition of the *Union Leader* newspaper. The article quoted a spokesperson for PSNH as having stated that, assuming regulatory approvals, the renegotiated arrangements as to Bio-Energy would save ratepayers approximately \$20 million, the Whitefield Power and Light renegotiation about \$12 million, and the proposed arrangement as to Hemphill Power and Light approximately \$8 million, for a total of \$40 million in ratepayer

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savings in connection with the three dockets. Transcript of October 23, 2001 in Docket No. DE 01-089 at 22-24. PSNH did not object to the inclusion of the article in the record, nor did it contest OCA's assertion that the newspaper obtained the quoted savings figures directly from PSNH.

The December 6 finance order in Docket No. DE 01-089 (Order No. 23,859) represents a similar disclosure of previously confidential information. Specifically, Order No. 23,859 recites that up to \$50 million in PSNH costs associated with the Whitefield transaction are to be securitized. PSNH provided this figure to the Commission in the context of a draft finance order, the issuance of which PSNH explicitly requested so as to facilitate the issuance of Rate Reduction Bonds (i.e., the securitization in question) with a sufficiently high rating from the bond rating agencies to generate the anticipated reduced interest rates and resulting ratepayer savings.

All of the confidentiality requests that PSNH and EMMT have made in these dockets have cited two privacy interests for the Commission to balance against the public's interest in disclosure. The first is PSNH's need to maintain the privacy of the financial concessions it was willing to make in order to renegotiate the power purchase arrangements, lest its bargaining position in future renegotiations be compromised. The second is

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EMMT's interest in maintaining the secrecy of the arrangements into which it has entered as an intermediary between an electric utility and independent power suppliers enjoying advantageous long-term contracts with the utility. Understandably, EMMT does not want its methodologies and strategies in this regard to be compromised with regard to other firms that engage in similar transactions in the context of the nation's increasingly deregulated wholesale energy markets.

It is the Commission's understanding, however, that competitors of both PSNH and EMMT can derive much of the data the companies seek to keep confidential by using the savings figures disclosed to the *Union Leader*, and the securitization figure set forth in Order No. 23,859, in light of the information as to the methodologies used by the two companies as contained in the documents publicly filed by the petitioners in the three subject dockets. We do not necessarily believe that the public disclosures have rendered irrelevant or too attenuated all of the privacy interests asserted in by PSNH and EMMT so far in these proceedings. Rather, we simply believe that the disclosures have sufficiently altered the RSA 91-A calculus to require our revisitation of previous confidentiality determinations. Moreover, as to the confidentiality motions that have not previously been discussed in a Commission order, it would clearly

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be helpful and appropriate for the movants to clarify the extent of their continued privacy interests given the full extent of the data that has been publicly disclosed.

In these circumstances, rather than issue a revised determination at this time, it is appropriate to give PSNH and EMMT a ten-day period in which to submit a filing setting forth the position on their current entitlement to confidential treatment of any documents submitted in the three dockets. Thereafter, we will afford a similar ten-day period for responses by parties seeking to present alternative views as to public disclosure.

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Based upon the foregoing, it is hereby

ORDERED, that the Commission's previous confidentiality determinations in Docket Nos. DE 01-089, DE 01-090 and DE 01-091 are hereby VACATED; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire and Edison Mission Marketing and Trading shall have an opportunity to submit, in writing, their positions as to confidential treatment of documents in these proceedings by December 24, 2001; and it is

FURTHER ORDERED, that parties wishing to provide responses to any such pleading do so by January 3, 2002; and it is

FURTHER ORDERED, that pending further order of the Commission on the above-referenced pleadings the documents previously filed under seal by Public Service Company of New Hampshire and Edison Mission Marketing and Trading shall continue to be treated as confidential pursuant to RSA 91-A, and it is

FURTHER ORDERED, that all pending motions to compel discovery in these dockets are DENIED as moot.

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By order of the Public Utilities Commission of New
Hampshire this thirteenth day of December, 2001.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary