

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 08-077

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

**Petition for Approval of Power Purchase Agreement and Renewable Energy Certificate
Option Agreement with Lempster Wind, LLC**

Order on Motion to Compel Discovery Responses

ORDER NO. 24,895

September 17, 2008

I. BACKGROUND

On May 29, 2008, Public Service Company of New Hampshire (PSNH) filed a petition requesting approval of a power purchase agreement and a renewable energy certificate (REC) option agreement with Lempster Wind, LLC (Lempster) pursuant to RSA 362-F:9. With its petition, PSNH filed a motion for confidential treatment for certain information contained in the filing related to the pricing of energy, capacity and RECs. On June 6, 2008, the Commission issued an order of notice scheduling a prehearing conference for June 27, 2008. The Office of Consumer Advocate (OCA) filed a letter on June 11, 2008 indicating that it would be participating in the docket on behalf of residential ratepayers pursuant to RSA 363:28. Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (Constellation) filed a joint petition to intervene on June 19, 2008. On June 24, 2008, Lempster entered a limited appearance for purposes of monitoring the proceeding. Freedom Partners, LLC (Freedom) filed a motion to intervene on June 25, 2008.

On June 23, 2008, Constellation filed an objection to PSNH's motion for protective order. At the prehearing conference, which was held on July 7, 2008, the Commission granted

PSNH's motion for confidential treatment. In addition, the Commission granted Constellation's motion to intervene with the condition that Constellation not be provided access to the confidential information contained in the filing. The Commission also granted Freedom's motion to intervene on a limited basis consistent with conditions agreed to between PSNH and Freedom.

Following the prehearing conference, Staff submitted a letter containing a proposed procedural schedule. The Commission approved the schedule by a secretarial letter issued on July 8, 2008. Pursuant to the procedural schedule, the OCA, Staff and intervenors commenced discovery.

On August 8, 2008, Constellation filed a motion to compel PSNH to respond to certain of Constellation's data requests on the grounds that PSNH provided limited or non-responsive answers to those requests without specifically objecting to such requests, and because PSNH stated that it would have to provide confidential or competitively sensitive information in response to certain data requests. In its motion, Constellation also noted that PSNH claimed that the responses to certain questions would more appropriately be addressed by Lempster than by PSNH. On August 12, 2008, Constellation filed a motion to make Lempster a mandatory party to the proceeding and requesting other relief.

On August 15, 2008, PSNH filed an objection to Constellation's motion to compel and motion to make Lempster a mandatory party to the proceeding. PSNH claimed that the information Constellation requested in its data requests falls into one of the following categories: 1) the information is not related to the scope of the proceeding, 2) the information requested exceeds Constellation's statement of its rights, duties, privileges or immunities in Constellation's motion to intervene, or 3) the data requests call for the release of confidential information. In

response to Constellation's motion to make Lempster a mandatory party, PSNH asserted that the Commission has no jurisdiction over Lempster and, moreover, Lempster's participation in this proceeding is not necessary for the Commission to determine whether the power purchase agreement is reasonable pursuant to RSA 362-F:9.

In the same pleading, PSNH also asked the Commission to withdraw Constellation's grant of intervenor status arguing that none of Constellation's rights, duties, privileges or immunities are affected by the proceeding. Lempster filed a letter on August 21, 2008 stating its agreement with PSNH's position regarding Constellation's motion to make Lempster a mandatory party to the proceeding. On August 25, 2008, Constellation filed an objection to PSNH's motion to withdraw Constellation's intervenor status.

The Commission issued a secretarial letter on August 29, 2008 which 1) denied Constellation's motion to make Lempster a party to the docket, 2) denied PSNH's motion to withdraw Constellation's intervenor status and 3) directed the parties to update the list of data requests that remained in dispute following a technical session scheduled for September 3, 2008.

Following that technical session, Staff filed a letter with the Commission identifying the data requests for which Constellation maintains its motion to compel and PSNH maintains its objection. The data requests are as follows:

Set 1-1. Set forth all steps PSNH has taken to obtain renewable energy certificates (including the approximate date when such steps were taken) to meet the renewable energy portfolio standard requirements of RSA 362-F. If PSNH has issued any request for proposals or other solicitations to procure renewable energy certificates, please provide a copy of any documents concerning or reflecting such requests or solicitations.

Set 1-5. Please provide any projections in PSNH's possession or control regarding the price of New Hampshire renewable energy certificates during the period when the arrangement with Lempster project is in effect.

Set 1-13. How many renewable energy certificates are projected to be generated by PSNH's Schiller plant for 2008 and thereafter? How does that number compare to the number of

renewable energy certificates that PSNH expects to receive and the class of certifications pursuant to RSA 362-F?

Set 1-15. For any purchased power resources other than the Lempster project that PSNH has under agreement, please indicate whether PSNH anticipates being entitled to any New Hampshire renewable energy certificates associated with such resource. For each such resource please list the number of certificates that PSNH expects to receive and the class of certificates pursuant to RSA 362-F.

Set 1-24. Did PSNH consider conducting a request for proposals to obtain the renewable energy certificates it ultimately decided to purchase from the Lempster project? If so, please explain the reason for PSNH's decision to conduct or not conduct such a process and provide any documents that reflect PSNH's consideration of such a process.

Set 1-29. Please provide a detailed timeline setting forth the first contact with the Lempster project by PSNH concerning the potential purchase of renewable energy certificates, energy and/or capacity, the dates when any proposals were exchanged, the date when an agreement in principle was reached or letter of intent was executed, the date when draft agreements were exchanged and the date on which PSNH became obligated to purchase renewable energy certificates, energy and/or capacity from the Lempster project.

II. COMMISSION ANALYSIS

In deciding a motion to compel discovery responses, we must consider whether the information being sought is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. *See, Investigation into Whether Certain Calls are Local*, 86 NH PUC 167, 168 (2001). New Hampshire RSA 541-A:33,II states in part:

The rules of evidence shall not apply to adjudicative proceedings. Any oral or documentary evidence may be received, but the presiding office may exclude irrelevant, immaterial or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law.

Our rule on evidence incorporates this statutory standard. See N.H. Code Admin. R. Puc 203.23. “[I]n general, discovery that seeks irrelevant or immaterial information is not something we should require a party to provide.” *City of Nashua*, 91 NH PUC 452,454 (2006).

PSNH submitted a petition pursuant to RSA 362-F:9 which allows distribution utilities to enter into multi-year purchase agreements with renewable energy sources for RECs, in

conjunction with or independent of purchase power agreements from such sources, to meet reasonably projected renewable portfolio requirements, provided that the Commission finds such agreements to be in the public interest as set forth in RSA 362-F:9, II.

The first part of Data Request 1-1 asks that PSNH explain “all steps” it has taken to acquire RECs in compliance with N.H. RSA 362-F, including the dates such steps were taken. The second part asks PSNH to provide a copy of any solicitations that it may have made to acquire RECs. We deny the motion to compel with respect to the first part of Data Request 1-1 because it is so broad as to result in the production of information immaterial to the issue of whether the purchase power agreement between PSNH and Lempster is in the public interest. We will grant the motion to compel with respect to the second request, which asks PSNH to produce copies of any solicitation it may have made to acquire RECs.

We also grant Constellation’s motion to compel with respect to Data Requests 1-5, 1-13, 1-15 and 1-24 because the information provided in response to those requests is relevant to the proceeding and may well lead to the discovery of admissible evidence. However, we deny Constellation’s motion with respect to Data Request 1-29. The inquiry asks PSNH to provide in minute detail a record of its contacts and negotiations with Lempster. Similar to our ruling regarding the first part of Data Request 1-1, this request is so broad as to result in the production of information immaterial to the issue of whether the purchase power agreement between PSNH and Lempster is in the public interest. We also express our concern that requiring the disclosure of this type of information may have a negative effect on the ability of PSNH and other electricity suppliers to negotiate long term contracts for RECs in the future.

We note that in its motion to compel, Constellation agrees that PSNH may redact confidential information from its responses, if so ordered by the Commission. Insofar as this

order grants Constellation's motion to compel, we allow PSNH to redact from its responses information for which it seeks protective treatment provided that PSNH files a motion requesting confidential treatment pursuant to Puc 203.08. PSNH shall provide Staff and OCA with unredacted copies of responses. We will determine the disposition of any such motion for confidential treatment later in this proceeding.

To allow PSNH adequate time to respond to this order and other parties to take such response into consideration in preparing their testimony, we will amend the procedural schedule as follows:

PSNH responses to Data Requests	September 24, 2008
Staff and Intervenor Testimony	October 1, 2008
Data Requests on Staff/Intervenor Testimony	October 10, 2008
Responses to Data Requests	October 20, 2008

The balance of the schedule is to remain as previously determined.

Based upon the foregoing, it is hereby

ORDERED, that Constellation's Motion to Compel is granted in part and denied in part as set out in this order; and it is

FURTHER ORDERED, that PSNH shall file responses pursuant to this Order no later than September 24, 2008 and the procedural schedule is otherwise amended as set forth above.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of
September, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary