

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Re: Public Service Company of New Hampshire

DE 08-77

Objection to PSNH's Motion to Withdraw Constellation's Intervenor Status

Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively “Constellation”) hereby object to PSNH's Motion to Withdraw Grant of Intervenor Status (“PSNH’s Motion”) and state as follows:

1. PSNH's motion is wrongly premised on the argument that (1) the scope of this docket is limited to the issues that PSNH's chooses to present, (2) Constellation's participation is limited to the issues that it referenced in its intervention petition even if it identifies other relevant issues relating to its own or the broader public interest in this proceeding and (3) if the Commission determines that Constellation has asked data requests that go beyond what it feels PSNH should be compelled to respond to, the remedy is a procedural death penalty, namely the ejection of Constellation from this proceeding.

2. PSNH's motion wrongly alleges that Constellation is seeking information that it should not have access to because of its commercial sensitivity. Constellation has made clear in its Motion to Compel and in its discovery requests, that, to the extent that Constellation properly should not have access to confidential information, it will accept redacted responses and that unredacted responses can be provided to Staff and the Consumer Advocate. PSNH's reliance on this argument is nothing less than an effort to evade addressing the fact that the information requested by Constellation is well within

the scope of proper discovery. PSNH's allegation is particularly disturbing since it was Constellation that voluntarily brought to the Commission's and PSNH's attention earlier in this proceeding the fact that PSNH had inadvertently disclosed confidential information. Constellation has shown itself to be a responsible participant in this proceeding, particularly with regard to the proper treatment of confidential information, and any insinuation to the contrary is entirely unfounded and inappropriate.

3. Constellation is not seeking to expand the scope of this proceeding beyond the issues that the Commission is required to investigate. Constellation's Motion to Compel explains why its data requests bear directly on the issues before the Commission. To the extent that PSNH and Lempster now argue that the relationship between the terms on which PSNH plans to purchase renewable energy certificates and power from Lempster and the terms that others were willing to propose is irrelevant, Constellation notes that without such a comparison it is impossible for the Commission to know whether PSNH grossly overpaid.

4. PSNH's motion seeks to expel Constellation from the proceeding because, PSNH claims, Constellation asked data requests that do not relate to the interests it articulated in its original petition to intervene. PSNH's argument is well wide of the mark. First, there is no basis in law for limiting Constellation's participation in the manner that PSNH suggests. As noted in Constellation's Motion to Compel, to the extent that Constellation's data requests seek information that "is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence," *City of Nashua*, Order No. 24,681, Docket No. DW 04-048 (Oct. 23, 2006), the data requests are proper. PSNH has failed to provide any legal support for its argument that Constellation may

only ask questions that relate to the specific interests that it articulated in its petition to intervene. Second, the data requests propounded do in fact relate to interests of Constellation that may be affected by this proceeding. Constellation has a strong interest in the proper functioning of the regulated and competitive electric market in New Hampshire because it participates actively in the competitive market and sells power to customers who receive delivery service (and sometimes supply service) in the regulated market and whose purchasing decisions are based in part on decisions in dockets such as this one. In particular, Constellation's participation in the competitive wholesale market can be directly and adversely affected if PSNH uses its regulated utility status to leverage its position in the competitive market and pays substantially more than other parties believe is prudent for renewable energy certificates, power and other energy products. This issue is of critical concern to Constellation in this proceeding and it is seeking to ensure that all relevant information regarding it is made available to the Commission.

5. PSNH argues that it is unnecessary in this case for the Commission to conduct the kind of inquiry required by statute because it has already approved one renewable energy certificate agreement in the Pinetree Power proceeding, DE 07-125, and because PSNH's witness, Mr. Wicker, has submitted testimony alleging that the contracts in this case "satisfy the reasonably projected renewable portfolio requirements during the contract period, as specified in RSA 369-F:9." PSNH's Motion at 3. Surely PSNH is not suggesting that Constellation and this Commission are required to simply take Mr. Wicker's statement at face value without conducting discovery to determine independently whether the statement is correct and whether PSNH has satisfied the projected requirements in a manner that is least cost and consistent with the public

interest. If such discovery were not necessary, this Commission could simply issue a perfunctory order approving PSNH's request without further inquiry or a hearing and giving PSNH the rubber stamp approval it apparently seeks.

6. This Commission is a public forum in which interested parties have a right to participate and be heard. The developing competitive market and the role of renewable resources are matters of paramount importance to state policy. Yet at every turn, PSNH in this and other dockets has acted as if the participation of Constellation is an annoyance that they wish to be relieved of, and which they ask the Commission to take care of for them. Unlike PSNH, Constellation's regulatory costs are not recovered through rates. Therefore Constellation must choose carefully which Commission proceedings are sufficiently important to its interests that it will actively participate. PSNH's goal appears to be to increase the cost and pain to Constellation of participating even in those few cases where it has sought to intervene. The Commission should make clear that such behavior will not be permitted.

7. PSNH wrongly states that Constellation's participation in this docket has demonstrated that it fails to meet the standards for intervention. PSNH's motion constitutes nothing less than a late-filed motion for reconsideration of the Commission's earlier grant of intervener status. Moreover, an intervenor should not be required to constantly prove and reprove its right to remain in a proceeding. In fact, it is PSNH, not Constellation, that is disrupting the prompt conduct of this proceeding by refusing to respond to appropriate discovery requests or providing non-responsive answers. The result has been to thwart or delay the discovery process. Constellation has complied at every step in good faith with the Commission's rules, including seeking to work out its

differences amicably with PSNH (to which PSNH was willing to show no flexibility whatsoever in the information it would provide) and only as a last resort filing a motion to compel. Constellation even went so far as to repropound some of its data requests to give PSNH a chance to refine its prior responses. (And, as noted above, when Constellation obtained—even before its formal intervention—information that it knew it was not intended to have, it notified PSNH and the Commission and took prompt steps to destroy the information.)

8. Finally, PSNH alleges that it should not be required to provide any responses to data requests where the responses contain some confidential information. As noted in its Motion to Compel, Constellation is entitled to at least redacted responses to such data requests so that it can determine whether the information that PSNH seeks to protect is actually exempt under the Right to Know law, RSA 91-A, and because the unredacted portions of the responses may well be useful in this proceeding. In addition, the responses in unredacted form may be informative to the OCA and Staff, particularly with the assistance of Constellation which may be more knowledgeable about the competitive market and able to assist Staff or the OCA even without direct access to sensitive information.

9. Constellation understands that the Commission does not normally entertain responses to objections, and therefore it has not addressed the specific statements regarding the relevance of Constellation's data requests and the reasons for making Lempster a mandatory party that were set forth in the two objections that PSNH incorporated in its Motion to Withdraw Grant of Constellation's Intervenor Status. Constellation therefore incorporates by reference the arguments that it has already set

forth in its Motion to Compel and its Motion to Make Lempster Wind, LLC a Mandatory Party.

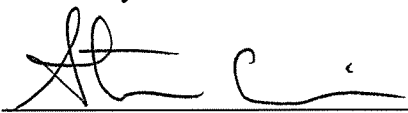
WHEREFORE, Constellation respectfully requests that the Commission deny PSNH's Motion to Withdraw Grant of Constellation's Intervenor Status and grant Constellation's pending motions.

Respectfully submitted,

CONSTELLATION NEWENERGY, INC.  
AND  
CONSTELLATION ENERGY  
COMMODITIESGROUP, INC.

By Its Attorneys

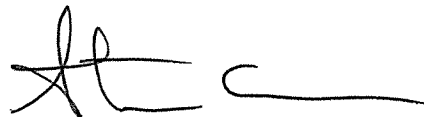
August 25 2008

By: 

Steven V. Camerino  
McLane, Graf, Raulerson & Middleton,  
Professional Association  
11 South Main Street, Suite 500  
Concord, NH 03301  
steven.camerino@mclane.com

CERTIFICATE OF SERVICE

I hereby certify that I have served this Objection on all persons on the service list this 25<sup>th</sup> day of August, 2008.



Steven V. Camerino