

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Petition for Approval Power Purchase Agreement and Renewable Energy Certificate
Option Agreement between Public Service Company of New Hampshire and
Lempster Wind, LLC

Docket No. DE 08-077

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
MOTION TO COMPEL

Pursuant to N.H. Code Admin. Rule Puc §203.09 (i), Public Service Company of New Hampshire ("PSNH") hereby moves to compel Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. ("Constellation") to respond to certain data requests propounded by PSNH in the above captioned matter. In support of its Motion to Compel, PSNH says the following:

A. PSNH first requests Constellation to respond to Request No. 12:

REQUEST No. 12: Page 6, line 12. What price has Constellation paid suppliers for power in conjunction with the purchase of RECs in New Hampshire?

RESPONSE: Constellation New Energy and Constellation Energy Commodities Group object to this data request on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the requested information is confidential and, therefore, consistent with PSNH's practice in this proceeding would not be required to be provided even if it were relevant.

At page 6, beginning on line 12, Mr. Allegretti testified: "Thus, if there is a means available to buy power at a lower cost in conjunction with the purchase of RECs and PSNH failed to pursue such a process, the results of that failure should be rejected by the Commission." Constellation New Energy is an active market participant required to purchase RECs, power and capacity to serve New Hampshire retail customers. Its experience in those markets could be helpful to the Commission to gauge whether the Lempster Wind contract prices are reasonable and whether the

agreements are in the public interest. RSA 362-F:9 I. Constellation stated in its Petition To Intervene that, “Constellation believes that, as competitive electric suppliers, CNE's and CCG's participation in this proceeding will assist the Commission in its consideration of the matters before it.” Petition of Constellation NewEnergy and Constellation Energy Commodities Group to Intervene, ¶ 7. If the information is confidential, Constellation may redact its responses to PSNH, request confidential treatment, and file full unredacted responses with the Staff and the Office of Consumer Advocate pursuant to Commission order in this proceeding. Order 24,895 at 6 (September 17, 2008).

B. PSNH next requests Constellation to respond to Request No. 14.

REQUEST No. 14: Is Constellation required to comply with New Hampshire's renewable portfolio standard? If yes, has it acquired RECs to be used for New Hampshire compliance purposes? If so, please detail how the number of RECs Constellation needed was determined, how such RECs were acquired, and the price paid for such RECs?

RESPONSE: Constellation New Energy and Constellation Energy Commodities Group object to this data request on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding such objection, they provide the following response. Constellation NewEnergy is required to comply with New Hampshire's renewable portfolio standard. It has not specifically acquired RECs for use in New Hampshire. However, it has obtained RECs that have ultimately been used to meet New Hampshire's RPS requirement. The number of RECs needed to comply with New Hampshire's RPS was determined by reference to the percentage set forth in RSA 362-F:3 as applied to the load served by Constellation NewEnergy in New Hampshire. It does not procure RECs specifically for use in New Hampshire or any other state, but rather the RECs acquired by the company become part of an overall portfolio that is used to meet all of the Company's obligations. The decision as to which RECs will be assigned to a particular state (or, for that matter, whether to make an alternative compliance payment instead of utilizing available RECs) is made at the time any particular RPS compliance filing is made.

The prices that Constellation has paid for New Hampshire RECs could assist the Commission in determining whether the prices that PSNH negotiated with Lempster are priced at or below market. Constellation's purchases are by definition market purchases; thus, providing actual market information could be helpful to the

Commission. The information, therefore, is entirely relevant. If the information is confidential, Constellation may redact its responses to PSNH, request confidential treatment, and file full unredacted responses with the Staff and the Office of Consumer Advocate pursuant to Commission order in this proceeding. Order 24,895 at 6 (September 17, 2008).

C. PSNH next requests Constellation to respond to Request No. 20.

REQUEST No. 20: Page 10, lines 2 - 4. Please provide the pricing and terms for power and/or RECs for any and all RFPs in which Constellation has participated as either a purchaser or bidder since 2004. Please provide all documents which study, report on, analyze, evaluate, examine, project, forecast, summarize, or refer to any RFPs for RECs, including Constellation's bid preparation in response to any RFPs and any analysis Constellation performed on bids received for which Constellation was the issuer of the RFP.

RESPONSE: The issue in this proceeding is the reasonableness of the contracts being proposed by PSNH and their compliance with state electric regulatory policy, not transactions that Constellation NewEnergy or Constellation Energy Commodities Group have or have not entered into. Constellation New Energy and Constellation Energy Commodities Group object to this data request on the grounds that it is not reasonably calculated to lead to admissible evidence and is overly broad and unduly burdensome.

At page 10, beginning on line 2, Mr. Allegretti states, "Although PSNH proposes to transfer the Lempster contracts at cost, it has not provided any basis that would support a determination that its cost is less than the market value of the contracts, . . ." Constellation could provide the Commission with valuable market information to test the reasonableness of PSNH's Lempster agreements, i.e. a basis that would support a determination that its [the Lempster agreements'] cost is less than the market value of the contracts. If the information is confidential, Constellation may redact its responses to PSNH, request confidential treatment, and file full unredacted responses with the Staff and the Office of Consumer Advocate pursuant to Commission order in this proceeding. Order 24,895 at 6 (September 17, 2008).

D. PSNH next requests Constellation to respond to Request No. 30 b.

REQUEST No. 30: Page 18, lines 12 - 19. Regarding the recent examples of long-term bilateral purchase agreements entered into by Constellation or its peers, please provide the following:

b. The pricing terms for power and RECs, by amount and year.

RESPONSE:

b. Constellation NewEnergy and Constellation Energy Commodities Group object to this data request on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the requested information is confidential and, therefore, consistent with PSNH's practice in this proceeding would not be required to be provided even if it were relevant.

Constellation is the party that offered these long term contracts as examples of “long-term bilateral purchase agreements with renewable generators to supply either retail or wholesale customers, without the need for a traditional rate base from which to recover the cost of those purchases.” Allegretti Testimony, page 18, lines 7-10. PSNH asked for the pricing terms for these contracts that Constellation’s witness offers as an alternative to the agreements PSNH entered into with Lempster Wind. The information is relevant to the issue of whether the Lempster Wind agreements are reasonable and in the public interest. If the information is confidential, Constellation may redact its responses to PSNH, request confidential treatment, and file full unredacted responses with the Staff and the Office of Consumer Advocate pursuant to Commission order in this proceeding. Order 24,895 at 6 (September 17, 2008).

E. PSNH attempted to resolve this matter informally by asking counsel for Constellation if the responses could be filed with the Commission under a Motion for Protective Order.

WHEREFORE, PSNH respectfully requests the Commission to issue an order which compels Constellation to respond to Requests Nos. 12, 14, 20 and 30, and requests such further relief as may be just and equitable.

Respectfully submitted,

November 5 2008

Date

By: Gerald M. Eaton

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Motion for Protective Order to be served pursuant to N.H. Code Admin. Rule Puc §203.11.

November 5 2008

Date

Gerald M. Eaton

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