

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Re: Public Service Company of New Hampshire

DE 08-77

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT**

Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. ("Constellation") respectfully request that the Commission issue a protective order to maintain the confidentiality of certain materials produced during discovery in the above referenced proceeding. In support of its motion, Constellation states as follows:

1. By Order No. 24,918, dated December 5, 2008, the Commission granted in part Public Service Company of New Hampshire's ("PSNH") Motion to Compel Constellation to respond to certain data requests that had been propounded by PSNH.

2. On December 12, 2008, Constellation provided responses to the data requests to which it had been ordered to respond pursuant to Order No. 24,918. The responses to Data Requests 12 and 30 (specifically Attachment PSNH-CONST 12 and Attachment PSNH-CONST S30(b)) contained confidential, proprietary information, and therefore Constellation provided the responses on a confidential basis pursuant to N.H. Code of Admin. Rules Puc 203.08(d), which allows a party to obtain confidential treatment of materials provided in discovery if a motion for protective order is submitted prior to the hearing on the merits.

3. The information that Constellation seeks to protect from public disclosure relates to prices paid by Constellation for power and renewable energy certificates. As an

active participant in the competitive wholesale and retail electric markets, Constellation's costs are highly sensitive commercial and financial information. If such information became known to Constellation's competitors it could cause substantial harm to Constellation because its competitors would be better able to determine how to price their retail products and the prices that they offer suppliers in the wholesale market. As PSNH has stated in the past, it competes with Constellation in the wholesale market, and therefore it could take advantage of such information similar to the risk posed by providing such information to other wholesale market purchasers. In addition, Freedom Partners, LLC, an intervenor in this proceeding, is a participant in the competitive electric markets. Furthermore, Constellation has a contractual obligation to keep the information confidential pursuant to the terms of the agreements under which the power and/or renewable energy certificates were purchased.

4. The foregoing information constitutes trade secrets and confidential information of Constellation that it does not disclose to anyone outside of its corporate affiliates and their representatives.

5. Because the information provided by Constellation in Attachment PSNH-CONST-S12 and Attachment PSNH-CONST S30(b) is confidential commercial information, it is exempt from public disclosure under the New Hampshire Right to Know Act, RSA 91-A. The Commission typically applies a balancing to determine whether information should be exempted from disclosure. *Union Leader v. New Hampshire Fin. Auth.*, 142 N.H. 540 (1997). Particularly in light of the fact that Constellation has submitted its withdrawal as an intervenor in this proceeding and will not be submitting testimony in this proceeding, there is unlikely to be any need for the

confidential information provided by Constellation to be used in this proceeding, and there would be no meaningful public benefit to be gained by publicly disclosing the information.

6. Redacted and unredacted copies of the information referred to above have been provided to the Commission staff and the Office of Consumer Advocate. PSNH and Freedom Partners were provided redacted copies only. By this motion, Constellation is seeking a protective order covering the unredacted copies.

7. RSA 91-A:5, IV expressly exempts from the public disclosure requirements of Chapter 91-A any records pertaining to "confidential, commercial or financial information." The Commission has the authority to protect the information described above pursuant to N.H. Code of Admin. Rules Puc 203.08.

8. Constellation requests that the Commission issue a protective order granting this motion and protecting from public disclosure the confidential commercial information described above. Copying, duplication, dissemination or disclosure in any form should be prohibited and the protected materials should be returned at the conclusion of the proceeding or destroyed on terms acceptable to Constellation. The protective order should also be extended to any discovery, testimony, argument or briefing relative to the confidential information.

WHEREFORE, Constellation respectfully requests that the Commission:

A. Issue an order protecting the information described above; and

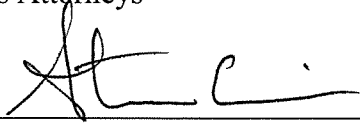
B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

CONSTELLATION NEWENERGY, INC.  
AND  
CONSTELLATION ENERGY  
COMMODITIES GROUP, INC.

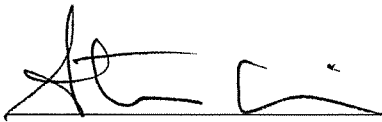
By Its Attorneys

January 23, 2009

By:   
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CERTIFICATE OF SERVICE

I hereby certify that I have served this Motion for Protective Order and Confidential Treatment on all persons on the service list this 23<sup>rd</sup> day of January, 2009.

  
Steven V. Camerino