

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Default Energy Service Rate

Docket No. DE 09-180

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
MOTION FOR PROTECTIVE ORDER RE: LEMPSTER WIND OUTPUT

Pursuant to RSA 91-A:5,(IV) and N.H. Code Admin. Rules Puc § 203.08, Public Service Company of New Hampshire ("PSNH" or the "Company") hereby requests protective treatment for the attachment to a response to a data request propounded by the Staff of the Commission at a technical conference held on June 2, 2010. The attachment contains data on historical and projected generation output and capacity factors attributable to the Lempster Wind LLC ("Lempster") facility that sells its output to PSNH. PSNH asserts that this information is confidential commercial information potentially eligible for protection from public disclosure under RSA 91-A:5,(IV). PSNH also requests that the information not be disclosed to competitive energy suppliers in this proceeding.¹ In support of its Motion for Protective Order, PSNH says the following:

1. The data request is as follows:

**Technical Session TS-01
Q-TECH-001**

Question:

Please provide the actual and forecasted output from Lempster wind PPA since its commercial operation

¹ "[P]etitions to intervene [were received] from Freedom Logistics LLC, Halifax-American Energy Company, LLC (collectively, Freedom-Halifax) and TransCanada Power Marketing Ltd. (TransCanada). The New England Power Generators Association, Inc. (NEPGA) also filed a motion to intervene on October 19, 2009." Order No. 25,048 at 1 (November 30, 2009).

2. In 2008, PSNH and Lempster entered into certain agreements regarding the sale of electrical power and Renewable Energy Certificates generated at the wind powered facility located in Lempster, New Hampshire. Those arrangements were filed for approval with the Commission in Docket No. DE 08-077. Along with its initial filing, PSNH submitted a Motion for Protective Order regarding the commercial terms and conditions of the agreements. Said motion was granted by the Commission at the Prehearing Conference. Docket No. DE 08-077, Transcript, June 27, 2008 at 40.

3. The electrical output and capacity factor information to be supplied in the response to the above quoted data request is also confidential commercial information. It is ISO-New England and NEPOOL policy that individual generator information is not disclosed to the public. In a competitive generation market, this information must be treated confidentially. PSNH does not disclose this information in its to the Commission with any specificity to Lempster's output. The Lempster information is reported in the aggregate with similar information concerning sales from Pinetree Power - Bethlehem and Pinetree Power - Tamworth, as these two independent power producers have also entered into confidential purchase power and REC sales arrangements with PSNH.

4. Before granting confidential treatment, the Commission must use a balancing test in order to weigh the importance of keeping open the record of this proceeding with the harm from disclosure of confidential financial or competitive information. "Under administrative rule Puc § 204.06 [predecessor to Puc § 203.08], the Commission considers whether the information, if made public, would likely create a competitive disadvantage for the petitioner; whether the customer information is financially or commercially sensitive, or if released, would likely constitute an invasion of privacy for the customer; and whether the information is not general public knowledge and the company takes measures to prevent its' dissemination." *Re Northern Utilities, Inc.*, 87 NH PUC 321, 322, Docket No.

DG 01-182, Order No. 23,970 (May 10, 2002). The limited benefits of disclosing the information outweigh the harm done by disclosing the information and the potential harm to the owners of the facilities from disclosure.

5. Release of this information would put PSNH at a disadvantage with respect to negotiations in the future with suppliers of supplemental power and RECs. Traditionally these purchase power and REC agreements have been kept confidential to protect both parties. Fewer suppliers may want to negotiate future supply contracts if they assume that the information in the final contract will be made public. Fewer suppliers means a less competitive arena in which PSNH will be procuring RECs and supplemental power supplies. The power and REC suppliers also have a proprietary interest in not having their sales and capacity factor data made public, as evidenced by the ISO-NE policy of keeping this information strictly confidential. A similar motion was granted in the previous Default Energy Service rate setting. Docket No. DE 08-113. Order No. 24,920, slip op. at 6 (“Coal and power supply contracts are generally kept confidential to protect both buyer and seller.”) (December 12, 2008).

6. It has been customary practice to grant confidential treatment to confidential commercial information such as power supply contracts and to restrict dissemination to intervenors who are competitive suppliers. In *Re Kearsarge Telephone Company*, Docket No. DT 07-027, a competitive local access telecommunications provider, SegTel, Inc., sought access to competitive information from the petitioning incumbent local telecommunications carriers. Order No. 24,820, 92 NH PUC 441, 443 (2007). In that decision the Commission stated, “It is well-established in the context of administrative proceedings that due process is a flexible concept, varying with the nature of the governmental and private interests that are implicated. *Matthews v. Eldridge*, 424 U.S. 319, 334 (1976).” *Id.* It is reasonable to restrict access to this information from the competitive and alternative suppliers in this proceeding. *See*, RSA 541-A:32, III.

WHEREFORE PSNH respectfully requests the Commission to issue an order to prevent the public disclosure of the attachment to the response to Data Request Technical Session TS-01, Q-TECH-001, to restrict the disclosure to the Staff and the Office of Consumer Advocate, and to order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

June 11, 2010
Date

By: Gerald M. Eaton
Gerald M. Eaton
Senior Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
(603) 634-2961

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.

June 11, 2010
Date

Gerald M. Eaton
Gerald M. Eaton