

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Reconciliation of Stranded Costs and Default Energy Service Charges

Docket No. DE 10-121

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
MOTION FOR PROTECTIVE ORDER
RE: SUPPLEMENTAL POWER SUPPLY CONTRACTS

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 attachments to the responses to two data requests propounded by the Staff and the Office of Consumer Advocate. The attachments contains details of the supplemental power purchase contracts entered into by PSNH for calendar year 2009. PSNH asserts that this information is confidential commercial information potentially eligible for protection from public disclosure under RSA 91-A:5,(IV). In support of its Motion for Protective Order, PSNH says the following:

1. Originally PSNH had responded to the following data request from TransCanada. The attachment to the response was supplied to all parties, and did not include any confidential information:

TC-01 Q-TC-002

Question:

With reference to page 5, lines 10-22 of Mr. Baumann's prefiled testimony in this docket, please provide specific information about the energy purchases that were made to supply PSNH's default service customers during 2009, including the dates the contracts were executed, the duration of the contracts, the contracting party, the quantity purchased and the purchase prices.

Response:

The attached table provides the following information for bilateral energy and short term unit contingent purchases made for 2009: execution date, duration, size, price and power delivery period. PSNH believes providing contracting party and pricing is commercially sensitive information and not needed for purposes of this review. PSNH will provide the table with contracting parties and pricing to Staff and the OCA, if requested, under a motion for protective order.

2. The Staff took up the invitation in the above response and made the following request:

NSTF-02 Q- STAFF-015

Question:

Reference response to TC 1-2. Consistent with the last sentence of the response, please provide the table including contracting parties and pricing information for 2009.

The OCA also asked a follow up request from PSNH's earlier Response to TransCanada TC01, Q-TC-002:

NOCA-02 Q- OCA-013

Question:

Referencing the response to TC 01-002, please add 2 additional columns with the first one showing the total MWhs acquired under each contract, and the second column showing the total amount paid by PSNH.

PSNH seeks protective treatment for the Excel spreadsheets attached to each of the responses to Staff and the OCA. The attachment to Response Staff No. 15 introduces the name of the supplier and the price per megawatt-hour. The attachment to Response OCA No. 13 contains the megawatt-hours delivered and the total dollars paid from which one can easily compute the price per megawatt-hour. PSNH requests that the attachments be supplied only to the Commission Staff and the OCA.

3. 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 power suppliers from disclosure of their prices. Pricing terms with power suppliers and fuel suppliers have traditionally been kept confidential. *See, Re EnergyNorth Natural Gas, Inc. dba KeySpan Energy Delivery New England*, Docket No. DG 03-068, Order No. 24,167, 88 NH PUC 221 , 226 (2003).

4. Release of this information would put PSNH at a disadvantage with respect to negotiations in the future with suppliers of supplemental power. Traditionally these contracts and purchase power 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 seek supplemental power supplies in the future. A similar motion was granted in a previous Default Energy Service rate setting docket 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).

5. 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 preventing the public disclosure of the attachments to the responses to NSTF-02, Q-STAFF-01 and NOCA-02, Q-OCA-013 and to order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

August 26 2010
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.

August 26 2010
Date

Gerald M. Eaton
Gerald M. Eaton

Public Service Company of New Hampshire
Docket No. DE 10-121

Data Request STAFF-02
Dated: 08/13/2010
Q-STAFF-015
Page 1 of 2

Witness: David A. Errichetti
Request from: New Hampshire Public Utilities Commission Staff

Question:

Reference response to TC 1-2. Consistent with the last sentence of the response, please provide the table including contracting parties and pricing information for 2009.

Response:

Please see the attached table for the requested information.

** The requested information is being filed under the Motion for Protective Order dated August 26, 2010.

Public Service Company of New Hampshire
Docket No. DE 10-121

Data Request OCA-02
Dated: 08/13/2010
Q-OCA-013
Page 1 of 2

Witness: David A. Errichetti
Request from: Office of Consumer Advocate

Question:

Referencing the response to TC 01-002, please add 2 additional columns with the first one showing the total MWhs acquired under each contract, and the second column showing the total amount paid by PSNH.

Response:

Attached, please find the requested information.

** The requested information is being filed under the Motion for Protective Order dated August 26, 2010.