

THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DE 10-121

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
2009 Energy Service Charge and Stranded Cost Recovery Charge Reconciliation

Objection to PSNH's Motion for Protective Order  
Re: Supplemental Power Supply Contracts

NOW COMES TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. ("TransCanada"), an intervenor in this docket, and objects to Public Service Company of New Hampshire's ("PSNH") August 26, 2010 Motion for Protective Order re Supplemental Power Supply Contracts ("Motion") regarding the attachments to the responses to two data requests from the Commission Staff, NSTF-02 Q-STAFF-015, and the Office of Consumer Advocate, NOCA-02 Q-OCA-013, pursuant to Admin. Rule Puc 203.07(e). In support of this objection to the Commission providing protective treatment for the attachments to the responses to these data requests TransCanada states as follows:

1. As the Commission noted in the Order of Notice, this docket concerns "the prudence of market purchases". RSA 369-B:3, IV(b)(1)(A) requires that the price of default service "shall be PSNH's actual, prudent, and reasonable costs of providing such power, as approved by the commission". The primary purpose of a reconciliation docket is the review of the prudence of the purchases that were made to serve default service customers: "To the extent that PSNH must procure retail energy from other sources, we review those costs for their prudence as well. *See, Public Service Co. of New Hampshire,*

Order No. 24,695, 91 NH PUC 527, 543. (November 8, 2006).” *Public Service Co. of New Hampshire*, Order No. 25,060, DE 09-091 (December 31, 2009), page 14. As the Commission noted in the first order approving a reconciliation for stranded cost recovery and transition service, *Re Public Service Co. of New Hampshire*, Order No. 24,125, 88 NHPUC 65, 70 (February 14, 2003):

The New Hampshire Supreme Court has held that when a utility has incurred costs resulting from demonstrated inefficiency or waste, or action inimical to the public interest, those costs may not be passed on to ratepayers. *Appeal of Seacoast Anti-Pollution League*, 125 NH 708, 723 (1985). The Court established this prudence standard to guide the Commission in determining whether costs should be included or excluded for ratemaking purposes. Consequently, the Commission must determine whether PSNH conducted itself with the level of care expected of highly trained specialists with regard to the unplanned outages which occurred during the period from August 2, 1999 through April 30, 2001.

2. On August 26, 2010, PSNH filed the Motion, asking the Commission to issue an order preventing the public disclosure of the attachments to the responses to NSTF-02 Q-STAFF-015, and the Office of Consumer Advocate, NOCA-02 Q-OCA-013 and to order such further relief as may be just and equitable. These attachments contain “details of the supplemental power purchase contracts entered into by PSNH for calendar year 2009.” Motion, at page 1. In support of the Motion PSNH cited the balancing test the Commission must use and argued that “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.*” [Emphasis added.] Motion, pages 2,3. PSNH also argued that pricing terms with power suppliers and fuel suppliers have traditionally been kept confidential and further stated that release of this information would put PSNH at a disadvantage with respect to negotiations with

suppliers in the future. PSNH's argument is essentially that the public and intervenors in this docket, including competitive suppliers, should not have access to the price information that it provided in the attachments to the response to these data requests.

3. In a case that PSNH cited in support of its Motion, *Re EnergyNorth Natural Gas, Inc. dba KeySpan Energy Delivery New England*, 88 NH PUC 221 (2003), where the Commission granted a motion for protective order, the facts were different in a significant way. In that case KeySpan specifically represented to the Commission that it was "contractually obligated to maintain the confidentiality of the price provisions of the agreement". 88 NH PUC at 225. PSNH has made no such representation here. Further, if prices for power supply were always kept confidential, the ability to judge prudence would be nullified to the extent that price in relationship to a market and prudence need to be weighed in order to render a judgment. If, as PSNH argues, the release of this dated and stale information would harm power suppliers, and if those suppliers are, or should be, so concerned about prices being revealed a year or two or even three years after the fact, why didn't those suppliers insist on confidentiality clauses for a reasonable period specified in the contracts with PSNH? If those suppliers are so concerned about the harm that PSNH alleges why aren't they in this docket arguing that the Commission should maintain the confidentiality of this information? TransCanada submits that there is no good reason to maintain the confidentiality of this information other than to insulate PSNH from a thorough review of its procurement practices. As a power supplier in the market TransCanada asserts that prices today are very different than they were in the past, and more specifically during the period when PSNH purchased power to supply default service in 2009. The market is dynamic and PSNH's assertion of harm is to itself,

not to its suppliers, and is not sufficient to justify the request for confidentiality because the harm to PSNH is the consequence of a finding that its actions were not reasonable or prudent.

4. In addition it is important to note that wholesale suppliers are required by the Federal Energy Regulatory Commission to disclose party, volume and price of power that they have supplied within 30 days of the end of the quarter within which it was provided. This information is not aggregated and is publicly available. Unitil has previously argued to the Commission that this kind of supplier price information should only be redacted until the information becomes available through FERC. Unitil has also argued that a winning supplier's concern is only "to avoid disclosing price information which may be leveraged against it in other contemporaneous negotiations." See Unitil's "Motion for Confidential Treatment and Protective Order" dated March 12, 2010 in DE 10-028, paragraph 7. TransCanada believes that both arguments (the fact that the information PSNH is seeking to protect has by now been publicly available through FERC for some time, and that the only legitimate concern of a supplier is that if the prices were revealed too soon they could be used as leverage in other contemporaneous negotiations, which is obviously not the case here given the date of the purchases) totally undermine any claim that PSNH has in this docket for confidential treatment of this outdated price and supplier information. Unitil's Motion also undermines PSNH's argument that pricing terms with power suppliers and fuel suppliers have traditionally been kept confidential.

5. The requested information regarding the agreements to purchase power for which PSNH seeks approval now as part of the reconciliation of 2009 costs goes to the very heart of the issue that the Commission must determine, i.e. whether the costs of the

power that it purchased to meet default service customer demand in 2009 were done in a reasonable and prudent manner. RSA 369-B:3, IV(b)(1)(A). Because the prices that PSNH paid to purchase power in 2009 are clearly relevant and critical to this proceeding, the benefit of making that information available for review by intervenors who have the expertise and experience to assist the Commission in evaluating whether PSNH used “the level of care expected of highly trained specialists” is of prime importance to this docket. Moreover, the dubious claim of “harm” alleged by PSNH related to the release of the price information, if accurate, has clearly been diminished by the passage of time as 2009 and earlier prices cannot be applied to current or future markets. Quite simply, denying intervenors access to the purchases made to serve default service customers in 2009 precludes their ability to evaluate whether the purchases were reasonable and prudent. The inability to review this critical information thus significantly inhibits the meaningfulness of TransCanada’s intervention and its ability to protect its “rights, duties, privileges, immunities or other substantial interests” that may be affected by this proceeding. See RSA 541-A:32; Admin. Rule Puc 203.17.

6. TransCanada believes that the information that it sought originally and that Staff and the OCA have subsequently sought through these data requests should be made available to TransCanada and the public. The information at issue is now dated information relating to purchases that were made between October 19, 2007 and December 3, 2009. See the redacted attachment to TC-01 Q-TC-002, Copy Attached. Given the staleness of the information at issue, given the lack of substantiation by PSNH to support its contention that this will harm power suppliers or PSNH, given the lack of interest on the part of the suppliers that PSNH tries to invoke to bolster its argument, and

given the fact that this information has been made public at FERC, TransCanada submits that the benefit of releasing the information at issue far outweighs the claim of purported harm that could result from the release of the information. The NH Supreme Court has held that the right to know law gives to any member of the general public as much right to disclosure as one with a special interest in a particular document. *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106, 109 (2005). Thus whether it is ratepayers or intervenors like TransCanada, what is at issue here is the release of information that is both essential and critical to a meaningful determination of whether PSNH has met its burden of proving that it meets the prudence criteria set forth in RSA 369-B:3, IV(b)(1)(A).

7. As the Commission noted in the *EnergyNorth* order cited above, the NH Supreme Court has instructed state agencies that they should “construe this exemption narrowly”. 88 NH PUC at 226. RSA 91-A:1 provides: “Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.” Because PSNH is a regulated utility, the power purchases that it has made in the past, the costs of which are borne by PSNH’s ratepayers, should be open and transparent. The benefits of keeping such information transparent and open to the public in a retrospective reconciliation docket clearly outweigh PSNH’s self-serving claim of “harm” that might be caused by making such information available.

8. The burden of proving the necessity of providing protective treatment to all of the information included in the attachments to these responses falls on PSNH.

TransCanada submits that PSNH has not met that burden. Further, any and all retrospective reconciliation dockets are disabled and moot without full access to supplier and price information.

9. For the reasons cited above TransCanada believes that the right to know law as applied to the facts of this case requires that the Commission reject PSNH's Motion.

10. Undersigned counsel has been authorized to represent that the Office of Consumer Advocate concurs with the relief requested.


WHEREFORE, TransCanada respectfully requests that this honorable Commission:

A. Deny PSNH's request for protective treatment of the attachments to the responses to NSTF-02 Q-STAFF-015, and the Office of Consumer Advocate, NOCA-02 Q-OCA-013 and require that PSNH make the attachments available to all parties to the docket and the public; and

B. Grant such further relief as it deems appropriate.

Respectfully submitted,

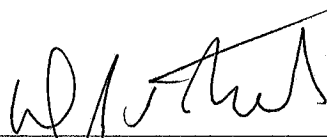
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Douglas L. Patch

September 3, 2010

Certificate of Service

I hereby certify that on this 3rd day of September, 2010 a copy of the foregoing motion was sent by electronic mail or first class mail, postage prepaid to the Service List.

  
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Douglas L. Patch

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

Data Request TC-01

Dated: 07/16/2010

Q-TC-002

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**Witness:** David A. Errichetti  
**Request from:** TransCanada

**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.

Standardized Contracts

<u>Execution Date</u>	<u>Contracting Party</u>	<u>Duration</u>	<u>Size (MW)</u>	<u>Price (\$/MWh)</u>	<u>Power Delivery Period</u>
04/30/2008		01/01/2009 - 12/31/2009	50		5X16
05/13/2008		01/01/2009 - 12/31/2009	50		5X16
05/30/2008		01/01/2009 - 12/31/2009	50		7X16
07/01/2008		01/01/2009 - 12/31/2009	50		7X16
07/14/2008		01/01/2009 - 12/31/2009	50		7X24
07/22/2008		06/01/2009 - 06/30/2009	100		5X16
07/22/2008		09/01/2009 - 09/30/2009	100		5X16
07/22/2008		01/01/2009 - 02/28/2009	100		5X16
07/23/2008		01/01/2009 - 02/28/2009	50		OFFPEAK
07/29/2008		04/01/2009 - 04/30/2009	100		OFFPEAK
08/07/2008		04/01/2009 - 04/30/2009	50		5X16
08/07/2008		01/01/2009 - 02/28/2009	50		5X16
08/08/2008		07/01/2009 - 08/31/2009	50		5X16
11/17/2008		04/01/2009 - 04/30/2009	100		5X16
01/21/2009		01/22/2009 - 01/22/2009	50		5X16
01/21/2009		01/23/2009 - 01/23/2009	100		5X16
01/21/2009		01/22/2009 - 01/22/2009	50		5X16
01/28/2009		01/30/2009 - 01/30/2009	100		5X16
01/28/2009		01/29/2009 - 01/29/2009	200		5X16
01/29/2009		01/30/2009 - 01/30/2009	100		5X16
01/29/2009		08/01/2009 - 11/30/2009	200		7X24
01/30/2009		01/31/2009 - 02/01/2009	50		2X16
01/30/2009		01/31/2009 - 02/01/2009	50		2X16
01/30/2009		02/02/2009 - 02/02/2009	150		5X16
02/02/2009		02/03/2009 - 02/03/2009	100		5X16
02/06/2009		02/10/2009 - 02/13/2009	100		5X16
02/06/2009		02/09/2009 - 02/09/2009	100		5X16
02/12/2009		02/13/2009 - 02/13/2009	200		5X16
02/12/2009		02/14/2009 - 02/15/2009	200		2X16
02/25/2009		02/26/2009 - 02/26/2009	100		5X16
02/25/2009		02/27/2009 - 02/27/2009	100		5X16
02/25/2009		02/26/2009 - 02/26/2009	150		5X16
02/25/2009		02/27/2009 - 02/27/2009	150		5X16
06/24/2009		06/27/2009 - 06/28/2009	300		2X16
06/26/2009		06/29/2009 - 06/29/2009	200		5X16
07/21/2009		07/22/2009 - 07/22/2009	300		5X16
08/18/2009		08/19/2009 - 08/19/2009	150		5X16
08/20/2009		08/21/2009 - 08/21/2009	150		5X16
08/21/2009		08/22/2009 - 08/23/2009	150		2X16
12/02/2009		12/03/2009 - 12/03/2009	200		5X16
12/03/2009		12/04/2009 - 12/04/2009	150		5X16

Structured and/or Unit-Contingent Contracts

<u>Execution Date</u>	<u>Contracting Party</u>	<u>Duration</u>	<u>Size (MW)</u>	<u>Price (\$/MWh)</u>	<u>Power Delivery Period</u>
10/19/2007		01/01/2008 - 12/31/2010	36		as produced