

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

Response to PSNH's Answer to TransCanada's 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 submits this response to Public Service Company of New Hampshire's ("PSNH") September 16, 2010 Answer to TransCanada's Objection to PSNH's Motion for Protective Order re Supplemental Power Supply Contracts ("Answer") 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. In response to PSNH's Answer, and in support of its Objection to the Commission providing protective treatment for the responses to these data requests, TransCanada states as follows:

1. In paragraph 1 of the Answer PSNH argues that the *Energy North* case that TransCanada cited in its Objection is inapplicable because PSNH did not allege that it was contractually bound to maintain confidentiality. PSNH goes on to provide the terms of the standard confidentiality provision that it uses in supplemental power purchase transactions and some other more specific examples. The express terms of the confidentiality provisions they have included allow for disclosure in order to "comply with any applicable law . . . or regulation" or include an exception for information "that

may become generally available to the public”. Thus, given the fact, which PSNH has not countered, that this information is made public by FERC, even the express terms of the agreements they have cited allow the disclosure of the information for which they are seeking confidential treatment.

2. In paragraph 2 of the Answer PSNH says that the Commission should ignore the fact that suppliers have not intervened to seek to maintain the confidentiality of this information, arguing that their intervention would “impede the prompt and orderly conduct of the proceeding and is unnecessary.” Answer, p.2. Input from a supplier who cared about this issue, if there were such a supplier, would help, not hinder, the resolution of this issue. Such intervention would put squarely before the Commission the party that PSNH alleges would be harmed by denying its Motion, instead of the party that may have the most to lose by the granting of the Motion, but no good reason for the confidential treatment other than limiting the exposure of the information in order to protect its interests. PSNH also argues that the Commission can determine if it is less likely that competitive suppliers would want to continue contracting with PSNH in the future if it denies PSNH’s Motion. As TransCanada pointed out in its Objection, and as Unitil has pointed out to the Commission, a winning supplier’s concern is only “to avoid disclosing price information which may be leveraged against it in other contemporaneous negotiations.” The market is dynamic; suppliers do not care about stale information, they care about contemporaneous exposure of information. Once again, PSNH should not be the one making this argument, especially in the context of a reconciliation docket, which is far from being a contemporaneous situation. Moreover, if PSNH utilized the RFP process that all other load serving entities in New England utilize and followed the

procedures that other utilities like Unitil do, this would not be an issue. They have become overly protective of information like this in irrational ways because they are treated differently than other utilities and somehow think they are entitled to different treatment than others. Unitil's latest filing in DE 10-028 underscores this – they are not protective of the information beyond what is necessary to complete the RFP process. Unitil is rational and straightforward on this issue, recognizing that it would be illogical and unnecessary to protect this information when it has already been made public through the FERC filings.

3. In the third paragraph of the Answer PSNH argues that because the information is already public through FERC, TransCanada does not need the relief it requests. It is important to remember that what brought this issue to a head is PSNH's request that the information it has provided to Staff and the OCA should not be available to anyone else. PSNH would have TransCanada try to search through the federal data base to find the information when it does not even know the suppliers that PSNH contracted with. Such a search would be unduly burdensome and is unnecessary for all of the reasons which TransCanada has cited in its Objection and this Response. This is an obvious attempt by PSNH to thwart any effort by TransCanada to be able to review PSNH's actions with regard to purchases of power to supply customers in 2009. PSNH would have the Commission ignore the NH Supreme Court's instruction to state agencies that they should "construe this exemption narrowly", 88 NH PUC at 226, and would have the Commission ignore RSA 91-A:1: "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.”

4. In the fourth paragraph of the Answer PSNH argues that Staff and the OCA are fully capable of protecting the interests of PSNH’s customers. PSNH would obviously prefer that no one else review its actions and would have the Commission ignore the protections offered to intervenors through the Administrative Procedures Act. Again, PSNH tries to get the Commission to ignore the fact that PSNH has the burden of justifying its request for confidential treatment, and ignore the fact that what is at stake here is the interpretation of a critical state law that mandates openness in government. TransCanada’s interest is in a competitive market—and reviewing the prudence of PSNH’s prices is part of trying to protect that interest. Yet again, PSNH tries to invoke the rights of absent suppliers to support its untenable position: “It is reasonable to restrict access to this information for the competitive and alternative suppliers in this proceeding.” Answer, p.4. Because of the staleness of the information, there are no such interests that need to be protected here.

5. In the fifth paragraph of the Answer PSNH tries unsuccessfully to argue that they are only protecting ratepayers by seeking confidentiality. OCA’s support for the relief TransCanada is seeking undermines their argument. Ratepayers are best served by PSNH’s actions seeing the light of day. PSNH then illogically argues that TransCanada would somehow benefit from the Commission denying PSNH’s request for confidential treatment. Should this stale and out-of-date information be made public, TransCanada will be in no better or worse position than any other supplier. Moreover, there would be

no harm to the public because of the information being made public—on the contrary, this would be a benefit to the public because it would help ensure a competitive market.

6. For the reasons cited in TransCanada's Objection and in this Response, TransCanada believes that the right-to-know law as applied to the facts of this case requires that the Commission reject PSNH's Motion.

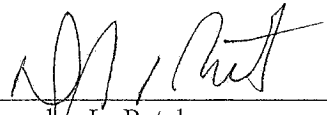
WHEREFORE, TransCanada respectfully requests that this honorable Commission:

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

B. Grant such further relief as it deems appropriate.

Respectfully submitted,

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Douglas L. Patch

September 21, 2010

Certificate of Service

I hereby certify that on this 21st 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.



Douglas L. Patch

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- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
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