


STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: May 15, 2014

AT (OFFICE): NHPUC

FROM:  Steven E. Mullen, Assistant Director – Electric Division

SUBJECT: **DA 10-123** – Public Service Company of New Hampshire – Affiliate Contract with E.S. Boulos Company

DA 11-091 – Public Service Company of New Hampshire – Affiliate Contracts

Staff Recommendation to Close Dockets

NHPUC 15MAY10 11:36

TO: Debra A. Howland – Executive Director

Summary

Staff recommends closure of DA 10-123 and DA 11-091 with no further action by the Commission as Staff did not find any evidence of preferential treatment. Although these dockets have been open for a number of years, in Staff's view it was necessary for the dockets to remain open given the interrelationship of the documents submitted in both dockets along with the fact that the ES Boulos contract submitted in DA 10-123 was for work performed as part of the Scrubber Project at Merrimack Station. Costs and prudence of the Scrubber Project are currently under review in DE 11-250, but the process of awarding the contract to ES Boulos has not arisen as an issue in that proceeding.

Staff further recommends that the Commission grant PSNH's request for a waiver with respect to Puc 203.02 in DA 11-091. Finally, Staff recommends that the Commission await an update on the confidentiality status of certain information specified in a motion for confidential treatment filed in DA 11-091 prior to issuing any ruling on that motion.

Background

On May 3, 2010, Public Service Company of New Hampshire (PSNH) filed, pursuant to RSA 366:3, a copy of a contract with an affiliated company, E.S. Boulos Company (E.S. Boulos). Accompanying the filing was a Motion for Confidential Treatment wherein PSNH requested confidential treatment and the issuance of a protective order for certain confidential, commercial or financial information contained in the contract.¹ The contract is dated April 23, 2010 and, consistent with its Motion for Confidential Treatment, PSNH filed both redacted and unredacted versions of the contract. On June 9, 2010, the Office of Consumer Advocate (OCA) filed a notice of participation in the docket.

¹ This memorandum deals only with procedural recommendations and does not cover the specifics or the merits of PSNH's Motion for Confidential Treatment filed in either DA 10-123 or a subsequent motion filed in DA 11-091.

According to PSNH, it entered into a contract with E.S. Boulos entitled “Balance of Plant Electrical Installation Agreement for the Merrimack Station Clean Air Project” for the furnishing of construction services as part of the then-ongoing project to install a wet flue gas desulphurization system (a/k/a the “Scrubber Project”) at its Merrimack Station generating plant. PSNH stated that the contract was awarded through the use of a standard competitive procurement process: PSNH issued a Request for Proposals; five bidders submitted proposals for the contract work; and the bids were reviewed and scored based upon technical, commercial and financial attributes. PSNH said that E.S. Boulos was awarded the contract as its proposal was determined to have the lowest total evaluated cost as well as having the highest overall technical evaluation score.

In a memorandum filed October 13, 2010, Staff informed the Commission that it intended to further investigate the contract and the procurement process pursuant to RSA 366:5. That memorandum also made mention of communications between Staff and PSNH that took place on June 7, 2010 with respect to notification from PSNH that, in the process of internal discussions at PSNH related to the filing of the E.S. Boulos contract, PSNH legal and regulatory personnel discovered that copies of contracts for work performed in the past by E.S. Boulos had not been filed with the Commission. As a follow-up to those communications, Staff sent PSNH some questions requesting additional information, including information about contracts with affiliated companies other than E.S. Boulos. After an extensive review of its records going back to April 2000, PSNH assembled the responsive information along with copies of the contracts and other supporting documentation. All of that information, including responses to questions particular to the E.S. Boulos contract, was submitted on April 26, 2011 and assigned Docket No. DA 11-091.

The information submitted on April 26, 2011 consisted of eight volumes of documents including purchasing manuals, procurement policies and procedures, copies of executed contracts, the Master Service Agreement for a Contractor of Choice,² and purchase orders from over the years relative to products and services obtained from various affiliate companies.³ The affiliated companies at issue are:

- E.S. Boulos Company, a provider of design/build services for high and medium voltage electrical projects;⁴
- Northeast Generation Services Company (NGS), a company formed in 1998 with personnel from the former Northeast Utilities Fossil/Hydro Production Department to provide engineering, design, environmental, maintenance, construction and operational services for power plants, utilities, municipalities and large industrial customers;

² As described in the April 26, 2011 filing in DA 11-091, a “Contractor of Choice” is a prequalified contractor with a three-year agreement (NU has an option to extend to a fourth year) to provide time and material work under \$1 million to PSNH and other NU companies.

³ Given the voluminous nature of the filing, PSNH requested a waiver of the requirement to file seven copies pursuant to Puc 203.02. PSNH indicated that it provided an electronic copy of the filing and had previously discussed the issue with Commission personnel.

⁴ PSNH included as Attachment 5 a Motion for Confidential Treatment with respect to the pricing terms of contracts between PSNH and ES Boulos from 2008 to the date of the filing.

- NGS Mechanical, Inc., a company formed by NGS in 2001 to provide contracted and union labor to support the engineering, construction and operational projects NGS had been competitively awarded; and
- Woods Network Services, Inc., an electrical contractor that was purchased by NGS in 2002 that specialized in commercial, industrial and residential electrical projects of medium to low voltage.

Of the above companies, only E.S. Boulos is still an active company that provides services to PSNH. According to PSNH, on October 24, 2008 both NGS and NGS Mechanical ceased doing business in New Hampshire. NU divested its interest in Woods Network Services on November 22, 2005.

In its April 2011 filing, PSNH acknowledged that the documents in that submission were not timely filed, but stated that the “filings were not made because these transactions took place in the normal course of business, without any awareness or participation of PSNH’s legal or regulatory personnel, and those personnel involved in these transactions were unaware of the requirements of RSA 366:3.”

Analysis and Recommendation

Staff has reviewed the documents filed in DA 10-123 and DA 11-091, including responses to various questions posed to PSNH. Based on its review, Staff has not found evidence that any of the affiliated companies received preferential treatment with respect to the provision of various products and services in the years covered by the documentation. Many, although not all, of the documents involved transactions totaling hundreds or thousands of dollars—amounts considered immaterial in terms of any potential rate or earnings impact. In addition, with respect to the contract with E.S. Boulos for work on the Scrubber Project, Staff notes that the bidding procedures and bids were thoroughly reviewed by Staff’s consultant for the Scrubber Project and no problems were noted,⁵ nor have any issues been raised with respect to that contract by other parties participating in that proceeding.

Staff further notes that in the April 2011 filing in DA 11-091, PSNH and NU stated that remedial measures and training have been instituted within the NU corporate family. In recent follow-up communications, Staff was informed that the Assistant Secretary and Chief Regulatory Counsel of Northeast Utilities Service Company (NUSCO) provided training to NUSCO Purchasing and E.S. Boulos personnel in June and July 2010 that covered the requirements of RSA Chapter 366 as well as the requirements of the Commission’s Puc 2100 rules regarding affiliate transactions. Ongoing training is the responsibility of NU’s Corporate Procurement Manager with oversight by the Corporate Compliance Manager who is also responsible for the preparation, filing and implementation of PSNH’s Compliance Plan pursuant to Puc 2016.01.⁶ According to

⁵ See June 2011 “Due Diligence Report” and September 12, 2012 “Final Report” prepared by Jacobs Consultancy and submitted in DE 11-250.

⁶ PSNH most recently updated its Affiliate Transactions Compliance Plan on November 26, 2013 to reflect changes as of October 31, 2013, particularly with respect to changes resulting from the merger of NU and NSTAR.

PSNH, the next such training will take place prior to the July 1, 2014 annual certification required by Puc 2106.03.

Nonetheless, Staff does not overlook the fact that PSNH failed to make the statutorily required filings of affiliated agreements in a timely manner. However, the penalty for failure to file the subject agreements is captured in the following statute:

366:4 Failure to File. – Any contract or arrangement not filed with the commission pursuant to RSA 366:3 shall be unenforceable in any court in this state and payments thereunder may be disallowed by the commission unless the later filing thereof is approved in writing by the commission.

Given the wording of the statute along with Staff not finding evidence of preferential treatment, Staff does not have a recommendation for the imposition of any particular penalty. With the exception of certain costs paid to ES Boulos for work on the Scrubber Project, costs arising out of the relevant transactions have either already been included in previously adjudicated proceedings or have been included in periods during which the relevant rate components were not subject to adjustment. The final disposition of Scrubber Project costs, including payments to ES Boulos will be determined as part of the final resolution of DE 11-250. Therefore, Staff recommends that DA 10-123 and DA 11-091 be closed with no further action by the Commission.

Given the nature of these dockets along with PSNH and NU's increased focus on training related to the filing requirements, Staff expects that PSNH will remain vigilant in satisfying the affiliate agreement filing requirements going forward. However, PSNH should remain mindful that any future failure to file the required agreements may leave it susceptible to non-recovery of any associated costs, as determined by the Commission.

Staff recommends granting the waiver of Puc 203.02 with respect to the number of copies of documents filed, given the voluminous nature of the submittal and the fact that an electronic copy was also provided. With respect to the motions for confidential treatment filed in both DA 10-123 and DA 11-091 and given the passage of time and the change in status of various contracts from executory to executed, Staff inquired with PSNH as to the present confidential/non-confidential status of the specified information. In response, PSNH stated that the information in DA 10-123 is no longer confidential, thereby rendering that motion for confidential treatment moot. As regards DA 11-091, PSNH is still in the process of reviewing the confidentiality status of the information filed in that docket. Therefore, Staff recommends that the Commission await an update on the confidentiality status of certain information specified in a motion for confidential treatment filed in DA 11-091 prior to issuing any ruling on that motion.

Please let me know if you have any questions or would like to discuss this further.

cc: Suzanne Amidon
Thomas Frantz
Service Lists in DA 10-123 and DA 11-091

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 10-123-1 Printed: May 15, 2014

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**

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Docket #: 11-091-1 Printed: May 15, 2014

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND
EXECUTIVE DIRECTOR
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