

NJonathan Peress

From: NJonathan Peress
Sent: Tuesday, July 19, 2011 5:29 PM
To: 'eatongm@nu.com'
Cc: hallsr@nu.com; menarel@nu.com
Subject: RE: DE 10-261 Nondisclosure Agreement
Attachments: Nondisclosure Agreement_7 19 2011 CLF dft (3).docx

Importance: High

Jerry, This is fine. I made one slight revision to #1 as a suggestion so that it is not too broad with regard to documents that contain CI. Can we arrange a record review at PSNH for Friday of this week (7/22)? Please let me know and sorry about the delay in responding. njp

From: eatongm@nu.com [<mailto:eatongm@nu.com>]
Sent: Tuesday, July 05, 2011 2:18 PM
To: NJonathan Peress
Cc: hallsr@nu.com; menarel@nu.com
Subject: DE 10-261 Nondisclosure Agreement

I have accepted most of your changes and tried to make the coverage a bit more generic, rather than executing a different agreement for each question and response. For example, OCA 1-39 and OCA 1-49 are to be disclosed to the environmental intervenors but no the competitive suppliers.

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THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
2010 Integrated Least Cost Plan
Docket No. DE 10-261

Nondisclosure Agreement

This Nondisclosure Agreement (the "Agreement"), entered into and made effective as of June 22, 2011, is by and between Conservation Law Foundation ("CLF"), having a place of business at Concord, New Hampshire, and Public Service Company of New Hampshire ("PSNH"), a New Hampshire corporation, having a place of business at 780 North Commercial Street, Manchester, New Hampshire 03101 (together, the "Parties"), and sets forth their agreement and understanding with respect to the protection of confidential and proprietary information provided by PSNH to CLF during the course of this Docket No. DE 10-261 ("DE 10-261" or the "Docket").

WHEREAS, PSNH, as a regulated utility, has filed its Least Cost Integrated Resource Plan with the New Hampshire Public Utilities Commission ("PUC" or "Commission") pursuant to RSA 378:38 et seq. which has been docketed as DE 10-261; and

WHEREAS, CLF has been granted intervenor status by Commission in Docket No. DE 10-261; and

WHEREAS, on April 29, 2011, CLF served data requests on PSNH including two data requests which seek responses that PSNH claims highly confidential and proprietary information; and

WHEREAS, CLF contends that in order to perform its review, it will require access to the responses to data requests propounded by CLF or other parties which PSNH contends are confidential business information eligible for protection from public disclosure under RSA 91-A:5, IV and NH Code Admin. Rule Puc 203.08 CLF Set No. 2, Q-CLF-001 and Q-CLF-005 (the "Confidential Information");

WHEREAS, the Parties agree to the terms of this Agreement regarding the disclosure and safeguarding of Confidential Information for the sole purpose of facilitating review of information for purposes of this specific Docket;

Now therefore, in consideration of the mutual promises and covenants made herein, and with the intent to be legally bound hereby, the Parties agree as follows:

1. **Confidential Information.** For purposes of this Agreement, "Confidential Information" shall mean the attachments to responses to Q-CLF-001 and Q-CLF-005 which provide proprietary or confidential information of a business and/or technical nature and include financially or commercially sensitive information. Confidential Information shall include that portion of any written, electronic or

other recordings, notes or documents ~~containing~~ ~~containing~~ or otherwise referencing ~~that any~~ portion of the Confidential Information.

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Confidential Information shall not include information that:

- a. is already known to CLF and was properly obtained by CLF (and is not deemed confidential) prior to the effective date of this Agreement;
- b. is already in the public domain or becomes available to the public other than through a negligent act or omission or willful misconduct of CLF;
- c. is acquired in good faith from a third party and at the time of acquisition, CLF has no knowledge or reason to believe that such information was wrongfully obtained or disclosed by the third party;
- d. is independently developed by CLF from information not defined as “Confidential Information” in this Agreement, as evidenced by CLF’s written records; or
- e. is disclosed to CLF by PSNH and, at the time of such disclosure (or thereafter) PSNH states that it is not “Confidential Information;” or
- f. is disclosed to CLF by PSNH in any other legal proceeding and in such proceeding, was not designated as “Confidential Information.”

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2. Nondisclosure and Use of Confidential Information. Confidential Information shall be held in trust and strict confidence by CLF and protected appropriately. Any and all such Confidential Information shall not be disclosed without prior written consent of PSNH. CLF shall require all of its principals, agents, volunteers and employees having access to the Confidential Information to be bound by the terms of this Agreement. CLF shall not use the Confidential Information, or any portion of the contents of the Confidential Information, for any purpose other than the preparation for and conduct of this specific proceeding, such as the analysis necessary for preparation of testimony or cross examination. Confidential Information shall not be used in any other forum or proceeding.

3. Any portions of testimony, reports or other document or communication, either written or electronic, containing Confidential Information shall be provided to the Executive Director of the Commission, the Commission Staff, and the Office of Consumer Advocate, clearly labeled as Confidential Information, subject to the Commission’s order approving the above-described Motion for Protective Order and treated as such by CLF. If CLF plans to use the Confidential Information during direct or cross examination, it shall ask the Commission in advance to take appropriate steps to introduce the Confidential Information into a closed record. CLF shall be responsible for any breach of this Agreement by its principals, agents or employees. For purposes of any future legal or regulatory proceeding, agreement to allow access to these confidential documents to a limited number of reviewers at CLF, subject to the terms of this Agreement, shall not be construed as a waiver of any rights PSNH may have in regard to maintaining the confidentiality of these documents.

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4. Required Disclosure of Confidential Information. Although it is understood by the Parties that Confidential Information will be reviewed by CLF, any of the Confidential Information reviewed by CLF and cited in any ensuing testimony shall continue to be considered Confidential Information. Should any legal or regulatory authority request the Confidential Information, CLF shall cooperate with PSNH in any reasonable efforts PSNH may undertake to prevent or limit such disclosure pursuant to and in compliance

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with the rules or regulations of the authorized body requiring such disclosure. In the event that a protective order or other remedy is not obtained by PSNH within thirty (30) days of notice from CLF, or within the timeframe set by the legal or regulatory authority seeking the information at issue, or PSNH waives compliance with the provisions hereof, CLF agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel and PSNH's counsel, is consistent with the scope of the demand. At the time of submission of such materials to the governmental or regulatory authority, CLF shall exercise reasonable efforts to obtain assurance that confidential treatment will be applied to such Confidential Information. Disclosure of Confidential Information pursuant to order of such a governmental or regulatory authority shall not constitute a waiver by PSNH of its rights in regard to this Confidential Information, nor waive the obligations of the Parties under this Agreement with respect to Confidential Information. Nothing in this Agreement shall limit or waive in any manner any rights that PSNH may have under applicable law to seek protection against disclosure pursuant to a subpoena or any other request for information.

5. The Parties shall cooperate to ensure that:

- A. No persons other than those who have a reasonable need for such information for the preparation and conduct of this Docket and who have signed or agreed to be bound by this Agreement shall be permitted to hear or review testimony given with respect to the that includes Confidential Information.
- B. At any PUC hearing or conference in this proceeding, no witness, other than witnesses for PSNH, may be provided with Confidential Information submitted by such Party unless that person has read this Agreement and has agreed to be bound by its terms, or unless an appropriate protective order has been entered by the PUC.

6. Remedies. CLF agrees that money damages would not be a sufficient remedy for any breach of this Agreement and that PSNH shall be entitled to injunctive or other equitable relief prohibiting any such breach or disclosure of any Confidential Information. Such remedy shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity.

7. Return of Material Upon conclusion of the review, all Confidential Information in the possession and/or control of CLF shall be returned to PSNH or destroyed, at the option and instruction of PSNH

7. No signatory hereto shall assign to any other person its rights or obligation hereunder, and any such assignment by any signatory of the rights and obligations hereunder shall be null and void.

8. Any individual's access to Confidential Information ceases upon termination of employment or contractual or other relationship with a Party, and any individual who terminated employment or contractual or other relationship with a Party who has executed this Agreement shall continue to be bound by its terms.

9. This Agreement is made under and shall be governed by the laws of the State of New Hampshire.

10. The Parties have entered into this Agreement in order to expedite the production of information, to minimize the time spent in discovery disputes, and to facilitate the progress of this investigation to the fullest extent possible. Entry into this Agreement shall not be construed as an admission by any Party regarding the scope of that Party's right to information under discovery or otherwise, or as a waiver of the right to raise any and all appropriate confidentiality issues in future dockets or jurisdictional questions.

11. Information that is designated by PSNH as Confidential Information pursuant to this Agreement which a Party also lawfully obtains independently of and in violation of this Agreement is not subject to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in duplicate by their duly authorized representatives effective as of the day and year set forth above.

Conservation Law Foundation

Public Service Company of New Hampshire

By: _____
N. Jonathan Peress
Its Attorney

Gerald M. Eaton
Senior Counsel

