

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

Docket DE 11-184

**Joint Petition
for
Approval of Power Purchase and Sale Agreements
and
Settlement Agreement**

**Motion for Confidential Treatment Pursuant to RSA Chapter 91-A
and N.H. Code Admin. Rules Puc §203.08**

Pursuant to RSA 91-A:5, IV and N.H. Code Admin. Rules Puc §203.08, Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, DG Whitefield, LLC d/b/a Whitefield Power & Light Company, and Indeck Energy-Alexandria, L.L.C. (collectively the “Wood IPPs”), hereby request confidential treatment and the issuance of a protective order for certain confidential, commercial, and financial information contained in responses to Staff’s first set of data requests to PSNH, requests numbered 1-1, 1-2, and 1-18. Additionally, the Wood IPPs request confidential treatment of their wood pricing to be viewed by advocate and non-advocate staff for the purpose of verifying the initial wood pricing in their power purchase agreements with Public Service Company of New Hampshire.

In support of this Motion for Confidential Treatment, the Wood IPPs say the following:

1. N.H. Code Admin. Rules Puc §203.08(a) provides that the Commission shall, upon motion, issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law.

2. Rule Puc §203.08(b) requires a motion for confidential treatment to include: (i) the documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought, (ii) specific reference to the statutory or common law support for confidentiality, and (iii) a detailed statement of the

harm that would result from disclosure and any other facts relevant to the request for confidential treatment.

3. The information provided in data responses and for which the Wood IPPs seek confidential treatment is identified in data responses Staff to PSNH 1-1, 1-2, and 1-18 filed herewith in the form prescribed by Rule Puc §201.04. The confidential information in data responses 1-1 and 1-2 includes the descriptive titles and details of financial agreements that are not jurisdictional to the Commission, with third parties that are not before the Commission, and for which Commission approval has not been sought. The confidential information contained in data response 1-18 consists of quarterly average wood pricing at each of five Wood IPP facilities for the calendar years 2009 and 2010. On information and belief, non-advocate staff requested this information for the purpose of verifying the current initial wood price contained in each of the five power purchase agreements under review. Confidential information to be further provided to advocate staff and non-advocate staff for the purpose of verifying initial wood pricing includes summary reports and back up materials evidencing wood purchases by each of the five Wood IPPs for a more recent six to twelve month period. These materials will contain wood vendor, quantity, price, and payment information.

4. The confidential information for which protection is sought is exempt from public disclosure under RSA 91-A:5, IV. RSA 91-A:5, IV exempts records pertaining to confidential, commercial, or financial information from disclosure under RSA 91-A:5, the “Right-to-Know Law.” RSA 91-A:5, IV; *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 553 (1997).¹

¹ In *Union Leader Corp.* the court stated that:

The terms “commercial or financial” encompass information such as business sales statistics, research data, technical designs, overhead and operating costs, and information on financial condition. *Landfair v. United States Dept. of Army*, 645 F. Supp. 325, 327 (D.D.C. 1986); see *Comstock Intern. v. Export-Import Bank of U.S.*, 464 F. Supp. 804, 806 (D.D.C. 1979) (loan agreements are financial or commercial information). Whether documents are commercial depends on the character of the information sought. Information is commercial if it relates to commerce. See *American Airlines, Inc. v. Nat. Mediation Bd.*, 588 F.2d 863, 870 (2d Cir.1978).

5. In determining whether information should be protected from public disclosure under RSA 91-A:5, IV and Rule Puc §203.08, the Commission uses the three-step analysis developed in *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005) and *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008). See, e.g., *Public Service Company of New Hampshire*, Order No. 25,158 (Oct. 15, 2010); *Unitil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (Sept. 22, 2009); and *Public Service Co. of New Hampshire*, Order No. 25,037 (Oct. 30, 2009).

6. This analysis requires (i) an evaluation of whether there is a privacy interest at stake that would be invaded by disclosure (ii) when a privacy interest is at stake, the public's interest in disclosure is assessed, and (iii) when there is a public interest in disclosure, that interest is balanced against any privacy interests in nondisclosure. See *Id.*; see also *Unitil Energy Systems, Inc.*, Order No. 25,054 (December 18, 2009); *Public Service Company of New Hampshire*, Order No. 25,059 (December 31, 2009).

7. The Wood IPPs have a privacy interest in their wood pricing information, and the Wood IPPs and the parties with whom they have entered into non-jurisdictional contracts have a privacy interest in the existence and substance of those contracts. To assure continued confidentiality of the non-jurisdictional contractual arrangements, each of the agreements referenced in data response Staff to PSNH 1-1 and 1-2 contains a confidentiality provision requiring the parties to keep its terms confidential. The filing of this Motion for Confidential Treatment is intended to comply with these confidentiality provisions.

8. The public has no interest in non-jurisdictional contracts that are not before the Commission for approval, and only limited interest in the Wood IPPs' wood pricing information.

9. The privacy interests of the Wood IPPs and the parties with whom they have entered into non-jurisdictional contractual arrangements, and the harm that they would suffer, outweigh any interest that the public may have in disclosure. Disclosure of

the details and descriptive titles of the agreements noted in data responses Staff to PSNH 1-1 and 1-2 would detrimentally impact the competitive position of Whitefield Power & Light Company and Indeck Energy-Alexandria as well as their contract counterparties in both the transactions contemplated by these contracts and in any similar transactions. As can be inferred from the titles of the agreements, the mere knowledge of the existence of these agreements could affect the financial value of those agreements to all parties thereto. Similarly, publication of the wood price information used in confirming initial wood pricing under the contracts will place the Wood IPPs at a competitive disadvantage when seeking to actually secure wood fuel at those initial wood prices, which would have a negative impact on both the Wood IPPs and PSNH, as the increase in wood prices would be reflected in the payment provisions of the power purchase agreements.

By comparison, the public's interest in disclosure is slight in this instance. The agreements referenced in data responses 1-1 and 1-2 are non-jurisdictional and no request has been made for Commission approval of these contracts. Moreover, the power purchase agreements in this docket are of a limited duration and each of the power purchase agreements is for a relatively small amount of unit contingent energy. Consequently, the fuel price adjustments under the power purchase agreements have a minimal effect on the public. The limited duration of these contracts minimizes their effect on the public and therefore lessens the public's interest in pricing information. At the same time, the short duration of the power purchase agreements places the Wood IPPs at greater competitive disadvantage in the negotiation of future wood pricing both during and after the short term of the agreements. As the Commission has reasoned in past cases, "[i]f public disclosure of confidential, commercial or financial information

would harm the competitive position of the person from whom the information was obtained, the balance would tend to tip in favor of nondisclosure.” *Re: National Grid plc*, 92 NHPUC 279, 326 (2007).

WHEREFORE, the Wood IPPs respectfully request that the Commission grant confidential treatment of the confidential, commercial, or financial information contained in the three data request responses and additional initial wood price verification documents and data, as requested herein. In accordance with N.H. Code of Administrative Rules Puc 203.08(g), the unredacted data responses 1-1, 1-2, and 1-18, and any information copied or derived from the materials viewed by advocate and non-advocate staff to verify initial wood pricing should be labeled "Confidential," held in a secure location within the Commission's offices, and not disclosed to the public or any party other than the Commission staff and Office of Consumer Advocate without the consent of the Wood IPPs.

Respectfully submitted,

BRIDGEWATER POWER COMPANY, L.P.,
PINETREE POWER, INC.,
PINETREE POWER-TAMWORTH, INC.,
SPRINGFIELD POWER LLC,
DG WHITEFIELD, LLC d/b/a WHITEFIELD
POWER & LIGHT COMPANY, and
INDECK ENERGY-ALEXANDRIA, LLC

By Their Attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused the attached Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc §203.08 to be filed in hand and electronically to the Commission and electronically, or by U.S. Mail, first class, to the persons identified on the attached Service List in accordance with N.H. Admin. Code Rules PUC 203.11(a).

Date: September 17, 2011


David J. Shulock, Esq.