

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 11-184**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, 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-ALEXANDRIA, LLC ET AL.**

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

**Pending Motions for Confidential Treatment**

**ORDER NO. 25,294**

**November 23, 2011**

**I. PROCEDURAL BACKGROUND**

On August 23, 2011, Public Service Company of New Hampshire (PSNH), 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-Alexandria, LLC (collectively, independent wood-fired producers or Wood IPPs), the New Hampshire Department of Resources and Economic Development and certain Staff of the Commission (Advocate Staff) (collectively, the Joint Petitioners) filed a petition for approval of (i) five power purchase agreements (Wood PPAs) between PSNH and the Wood IPPs excluding Whitefield Power & Light Company, (ii) a settlement, release and support agreement (settlement agreement) between PSNH, the Wood IPPs and Berlin Station, LLC, Laidlaw Berlin BioPower, LLC (Laidlaw) and Cate Street Capital, Inc., and (iii) a proposal for the ratemaking treatment relating to the costs of the Wood PPAs, together with supporting direct testimony.<sup>1</sup> The filing followed

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<sup>1</sup> The order of notice issued on August 25, 2011 contains a more complete description of the filing and the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2011/11-184.html> contains a complete procedural history.

the Wood IPPs' appeals to the New Hampshire Supreme Court from two Commission orders in Docket No. DE 10-195, *Public Service Company of New Hampshire*, Order No. 25,239 (June 23, 2011) (approved an amended power purchase agreement between PSNH and Laidlaw and denied the Wood IPPs' motion for rehearing) and *Public Service Company of New Hampshire*, Order No. 25,213 (April 18, 2011) (conditionally approved the original power purchase agreement between PSNH and Laidlaw). According to the petition, the Wood PPAs are part of a transaction to resolve the Supreme Court appeals, which is necessary for the construction and operation of the Berlin Station facility to go forward and to support the continued operation of the Wood IPPs' generating facilities and related economic benefits.

The Commission issued an order of notice on August 25, 2011 that confirmed Commissioner Amy L. Ignatius's August 23, 2011 announcement of her disqualification from this proceeding and designated Commission Staff members Thomas C. Frantz and F. Anne Ross as staff advocates pursuant to RSA 363:32 due to their involvement in negotiating the Wood PPAs on behalf of the state and participating as Joint Petitioners. The order of notice scheduled a prehearing conference for September 9, 2011. PSNH filed a letter on September 9, 2011 notifying the Commission that the closing had previously occurred on September 2, 2011.

On September 6, 2011, motions to intervene were filed by the Business and Industry Association and Granite State Hydropower Association. The Office of Consumer Advocate (OCA) filed a letter on September 6, 2011 stating that consistent with RSA 363:28 it would be participating in this docket on behalf of residential ratepayers. A joint petition to intervene was filed by Freedom Logistics, LLC, Halifax-American Energy Company, LLC and PNE Energy Supply LLC on September 7, 2011. The Commission granted all motions to intervene at the

prehearing conference. Following the prehearing conference and the technical session held the same day, Non-Advocate Staff filed a proposed procedural schedule which was approved by secretarial letter dated September 22, 2011. Consistent with the procedural schedule, Non-Advocate Staff Steven E. Mullen filed testimony on October 14, 2011 and on November 11, 2011, PSNH filed the rebuttal testimony of Stephen R. Hall.

Three motions for confidential treatment of certain information contained in the Joint Petitioner's filing and discovery responses have been filed and the confidential versions of the discovery responses have also been filed for purposes of obtaining rulings on the motions. All three motions assert that the information is confidential, commercial and financial information that should be protected from disclosure pursuant to RSA 91-A:5, IV and N.H. Code Admin. Rules Puc 203.08. First, on August 23, 2011, the Wood IPPs filed a motion for confidential treatment of Wood PPA pricing and other information contained in the Joint Petitioners' filing. On September 15, 2011, the Wood IPPs filed a letter requesting that the Commission also grant confidential treatment to certain price related information in the PSNH and Staff Advocate responses to Non-Advocate Staff data request 1-12 on the basis of the arguments set forth in their August 23, 2011 motion. The OCA filed an objection to the first motion on September 16, 2011. OCA's objection would also relate to the Wood IPPs' letter request.

Second, on September 15, 2011, the Wood IPPs filed a motion for confidential treatment of certain information contained in responses to Non-Advocate Staff data requests 1-1, 1-2 and 1-18 and information to be viewed in connection with verifying the initial wood prices pursuant to the Wood PPAs. Third, on October 3, 2011, the Wood IPPs filed a motion requesting confidential treatment of the Wood IPPs' responses to OCA 1-5 regarding the wood chip

tonnages purchased by each Wood IPP and the cost by source state or province. No objections to the September 15, 2011 and October 3, 2011 motions were filed.

## **II. MOTIONS FOR CONFIDENTIAL TREATMENT, POSITIONS OF THE PARTIES AND COMMISSION ANALYSIS**

### **A. August 23, 2011 Motion for Confidential Treatment**

#### **1. Wood IPPs**

The August 23, 2011 motion seeks confidential treatment of certain information in each of the Wood PPAs, including energy prices, length of contract term and energy delivery period, purchase quantity caps, Initial Wood Prices for purposes of the fuel price mechanism, and input figures for the calculation of the fuel price adjustment (referred to in the motion as “pricing terms” and “pricing information” in this order), as well as the Wood IPPs’ federal tax identification numbers and bank wire transfer information. The Wood IPPs also request confidential treatment of certain portions of Exhibit B attached to the settlement agreement that was part of the Joint Petitioners’ filing.<sup>2</sup> This exhibit contains details of the closing of the construction financing of the Berlin Station facility in connection with the Wood IPPs’ withdrawal of the New Hampshire Supreme Court appeals. According to the Wood IPPs, the confidential arrangements described in Exhibit B are not subject to Commission approval. Wood IPPs’ August 23, 2011 motion for confidential treatment at 2. Finally, the Wood IPPs’ September 15, 2011 letter requests that the PSNH and Staff Advocate responses to Non-Advocate Staff data request 1-12 be included in the motion’s request for confidential treatment.

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<sup>2</sup> The motion for confidential treatment of Exhibit B is made in general terms. However, since portions of Exhibit B filed with the Commission are redacted, the motion is treated as a request for confidential treatment of only those portions.

The responses to data request 1-12 include information regarding energy prices and quantity caps in the Wood PPAs that is used to calculate the estimates of above-market costs.

The Wood IPPs claim that the information for which they seek protection is not subject to public disclosure pursuant to RSA 91-A:5, IV, which exempts records pertaining to confidential, commercial or financial information from disclosure under RSA 91-A, New Hampshire's "Right-to-Know Law." The motion describes the Commission's three-step analysis for determining whether information should be protected from public disclosure under *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005) and *Lambert v. Belknap County Convention*, 157 N.H. 275 (2008): (1) an evaluation of whether there is a privacy interest at stake that would be invaded by disclosure, (2) when a privacy interest is at stake, an assessment of the public's interest in disclosure, and (3) when there is a public interest in disclosure, a balancing of that interest with the interests in privacy. *Id.* at 3.

According to the Wood IPPs, they and PSNH have a privacy interest in the various pricing terms of the Wood PPAs. The Wood IPPs argue that the Commission has previously found a privacy interest in similar pricing information, citing *Public Service Company of New Hampshire*, Order No. 24,839 (April 4, 2008) (Commission found that the disclosure of certain pricing information in power purchase agreements with two Wood IPPs could put PSNH and its ratepayers at a competitive disadvantage) and other Commission orders. *Id.*

Moving to the second step of the analysis, the Wood IPPs claim that the public's interest in the pricing information in the Wood PPAs is limited. They state that each Wood PPA is for a relatively small amount of unit contingent energy and is only for a "relatively short duration."

*Id.* at 3-4. The Wood IPPs also state that the PPAs are only for the purchase of energy, and not for the purchase of renewable energy certificates. *Id.* at 4.

Applying the third step in the analysis, the Wood IPPs claim that their privacy interest and that of PSNH and the harm that these parties would suffer from disclosure outweigh any public interest in disclosure. The Wood IPPs state that PSNH entered into the Wood PPAs in part to support the continued operation of the Wood IPPs' generating facilities and their related benefits to the New Hampshire economy, and in part to respond to requests to resolve the New Hampshire Supreme Court appeals. *Id.* According to the Wood IPPs, the pricing terms of the Wood PPAs were the result of protracted and detailed confidential negotiations. *Id.* The Wood IPPs further state that the agreement of the parties regarding the confidentiality of the pricing provisions is memorialized in each of the Wood PPAs and they filed the motion for confidential treatment to comply with that contract term. *Id.*

The Wood IPPs argue that, given the short duration of the Wood PPAs, disclosure of the pricing terms would detrimentally impact both the Wood IPPs' competitive position in the power sales marketplace with respect to other competitive sellers of electricity and with each other as competitors in the sale of electricity and purchasers of wood fuel and would negatively impact PSNH's ability to attract negotiating partners and obtain best pricing from individual generators for PSNH ratepayers in the future. The Wood IPPs claim that, as a general matter, PSNH's ability to obtain the most economic price from any competitive seller is improved if that seller's pricing remains confidential and does not become available either directly or indirectly to the seller's competitors. *Id.* at 4-5.

The Wood IPPs claim that the disclosure of pricing information would affect their ability to negotiate wood supply contracts and both the Wood IPPs' and PSNH's ability to negotiate future power contracts. By contrast, the Wood IPPs claim that the public interest in disclosure is slight in this instance because the Wood PPAs are of limited duration, each agreement is for a relatively small amount of unit contingent energy, and the rate treatment sought will not raise PSNH's default service rates. According to the Wood IPPs, the parties may negotiate for energy sales within the foreseeable future following the Commission's approval of the Wood PPAs. The limited duration of the contracts, according to the Wood IPPs, minimizes the effect of the contracts on the public and therefore lessens the public's interest in the pricing information. At the same time, the Wood IPPs assert that the short duration of the contracts places the parties, both PSNH ratepayers and the Wood IPPs, at a greater competitive disadvantage in the negotiation of future contracts. *Id.* at 5. The Wood IPPs conclude that, on balance, the Wood IPPs' and PSNH's privacy interests outweigh any public interest in the pricing terms of the Wood PPAs and the wire transfer information, as well as the confidential information contained in Exhibit B. *Id.*<sup>3</sup>

## 2. OCA Objection

The OCA objects to confidential treatment of Wood PPA pricing and related information and states that the petition seeks "unprecedented" ratemaking treatment of the above-market costs by requesting that up to \$8.5 million annually in such costs be shifted from PSNH's default energy service rate to PSNH's distribution rate.<sup>4</sup> OCA Objection at 1-2. The OCA states that in

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<sup>3</sup> For the same reasons, in their September 15, 2011 letter the Wood IPPs request confidential treatment of the responses to Non-Advocate Staff data request 1-12 regarding the calculation of the above-market costs.

<sup>4</sup> The OCA's objection does not contest the confidential treatment of the Wood IPPs' federal tax identification numbers and wire transfer information, and Exhibit B.

Docket No. DE 10-195 the Commission required PSNH to disclose similar pricing information to the public. The OCA points out that the Wood IPPs were parties to that proceeding and supported public disclosure of the pricing information in that case.<sup>5</sup>

Contrary to the Wood IPPs' assertion that the public interest in the pricing information in the Wood PPAs is "limited," the OCA argues that disclosure of the pricing information is central to the public's understanding of how the Commission evaluates the Wood PPAs, quoting the Commission's ruling on the motion for confidential treatment in Order No. 25,158. The OCA asserts that the Commission's evaluation will include the question of whether the PPAs are consistent with PSNH's most recent least cost integrated resource plan (RSA 378:38 et seq.) and whether the resulting rates are reasonable and in the public interest (RSA 374:57). *Id.* at 2-3.

The OCA argues that, as in Order No. 25,158, absent disclosure of the pricing terms and details, the public's ability to understand the Commission's findings regarding the Wood PPAs would be diminished. The OCA also quotes the Wood IPPs' argument against confidential treatment in Docket No. DE 10-195 and states that, in the instant proceeding as in Docket No. DE 10-195, the pricing terms and costs of the Wood PPAs will be at the core of the Commission's review. Further quoting the Wood IPPs' argument in Docket No. DE 10-195, the OCA maintains that the public will not understand how the Commission came to a decision to approve or disapprove the Wood PPAs as a cost-effective realization of the state's energy policies without making public the pricing terms and costs contained in the PPAs. According to the OCA, the Wood IPPs are estopped and barred from taking a different position in the present case. *Id.* at 3.

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<sup>5</sup> See *Public Service Company of New Hampshire*, Order No. 25,158 (October 15, 2010) (ruling on motion for confidential treatment) and *Public Service Company of New Hampshire*, Order No. 25,168 (November 12, 2010) (ruling on motion for rehearing).



The OCA maintains that public disclosure is even more important than in DE 10-195, pointing out that all of PSNH's customers are implicated by the proposal to shift a portion of the above-market costs to PSNH's distribution rate, which is paid by all customers, even those that have left PSNH's default service and migrated to competitive supply. *Id.* at 3-4. Further, the OCA argues that \$20 million in above market costs associated with the Wood PPAs is significant and urges the Commission to follow its prior ruling and the principles of openness and disclosure underlying RSA 91-A. The OCA cites decisions of the New Hampshire Supreme Court holding that the purpose of RSA 91-A is to ensure the greatest possible public access to the actions of government bodies, to provide the "utmost information" with the goal of providing access to all public documents, and to favor disclosure. *Id.* at 4. The OCA states that, if the Commission approves the Wood PPAs, the public has a right to know the basis for the approval, particularly since the Wood PPAs prices as designed are above-market, regardless of the duration of the Wood PPAs, the magnitude of the above-market price or whether or not the Wood PPAs include the purchase of renewable energy certificates. *Id.* at 4-5.

Regarding the Joint Petitioners' claim that the Wood PPAs achieve certain "public interest interests," the OCA states that similar assertions were made in connection with the power purchase agreement that was the subject of Docket No. 10-195. In that proceeding, the Wood IPPs argued that "PSNH cannot claim to be the instrument of a statewide public policy and ask the Commission to approve its implementation of those statewide public policies on the one hand and, on the other hand, claim that the public has no interest in the cost of that implementation." The OCA argues that the same principle applies to the review of the Wood PPAs in the instant proceeding.

The OCA also challenges the Wood IPPs' assertion that they would be harmed by the disclosure of the pricing terms. The OCA states that because it is publicly known that the prices are above-market, it is unlikely that public disclosure of the pricing terms would impact the Wood IPPs' ability to negotiate PPAs in the future. According to the OCA, future negotiators of PPAs with the Wood IPPs are highly unlikely to be offering above-market prices or using information about these above-market prices as a bargaining tool against the Wood IPPs. *Id.* at 5. The OCA concludes that the Commission must deny the motion for confidential treatment as it relates to the pricing information in the Wood PPA, consistent with its ruling in Docket No. DE 10-195.

### 3. Commission Analysis

The Right-to-Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4, I. RSA 91-A:5, IV exempts from public disclosure any records that constitute confidential, commercial, or financial information. In *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008), the New Hampshire Supreme Court described a three-step analysis it uses to determine whether information should be protected from public disclosure pursuant to the Right-to-Know law. *See also Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005). We apply the three-step analysis in reviewing motions for confidential treatment filed with the Commission. *See, e.g., Unutil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009).

First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know Law

requires disclosure. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure.

In furtherance of the Right-to-Know Law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08(b).

We first consider whether confidential treatment of the pricing information in the Wood PPAs is warranted using the analysis described above. The pricing information includes energy prices, length of contract term and energy delivery period, purchase quantity caps, Initial Wood Prices for purposes of the fuel price mechanism, and input figures for the calculation of the fuel price adjustment. The Wood IPPs cite to several prior orders in which the Commission recognized a privacy interest in similar information. The pricing information is a product of confidentially conducted negotiations involving PSNH and the Wood IPPs as well as governmental officials and has not otherwise been publicly disclosed. In addition, each of the PPAs contains a confidentiality provision requiring the parties to keep the terms confidential except as required by law or as necessary to obtain regulatory approval from the Commission.

Under these circumstances, we deem the pricing information to be confidential commercial, or financial information in which PSNH and the Wood IPPs have a privacy stake. At the same time, we conclude that there is a public interest in disclosure of the pricing information. Because we are asked to approve the Wood PPAs as being in the public interest, public disclosure informs the public of the conduct and activities of its government. We are also mindful that, in addition, customers of PSNH have a particular interest in disclosure as our approval of the Wood PPAs would mean that they will be required to pay the costs resulting from the pricing terms.

Where, as here, there is a public interest in disclosure of the pricing information, we balance that interest against any privacy interests in non-disclosure. The Wood IPPs and the OCA have opposing views of the appropriate balance of interests.

On the one hand, the Wood IPPs claim that the public interest in disclosure is slight in this case because the Wood PPAs are limited in duration, each agreement is for a relatively small amount of unit contingent energy, and the rate treatment sought will not raise PSNH's default service rates. They add that the parties may negotiate for energy sales within the foreseeable future following the Commission's approval of the Wood PPAs. The Wood IPPs claim that in comparison, given the short duration of the Wood PPAs, disclosure of the pricing terms would harm their competitive position with respect to other competitive electricity sellers and with each other as competitors in the sale of electricity and purchasers of wood fuel. The Wood IPPs specifically argue that the disclosure of pricing information would affect their ability to negotiate wood supply contracts. In addition, they argue that given the short duration of the Wood PPAs, disclosure would harm PSNH's ability to negotiate the best prices from individual generators for PSNH ratepayers in the future.

On the other hand, the OCA argues that disclosure of the pricing information is central to the public's understanding of how the Commission evaluates the Wood PPAs, citing the Commission's ruling and the Wood IPPs' own arguments in Order No. 25,158. The OCA argues that in comparison, because it is publicly known that the prices are above-market, it is unlikely that public disclosure of the pricing terms would impact the Wood IPPs' ability to negotiate PPAs in the future. OCA also contends that future negotiators of power purchase agreements with the Wood IPPs are highly unlikely to be offering above-market prices or using information about these above-market prices as a bargaining tool against the Wood IPPs.

With one exception described below, we are persuaded that the benefit of public disclosure of the Wood PPA pricing terms outweighs the possibility of harm to the Wood IPPs and PSNH from disclosure. First, the Wood IPPs have not clearly explained how their competitive position with other electricity sellers or with each other as sellers of electricity will be adversely affected by disclosure and it is not clear that future arrangements of this kind are likely to be negotiated with PSNH. Accordingly, the case for confidential treatment is not particularly strong. Second, we conclude that the public interest in disclosure is not necessarily to be gauged with reference to the length of the agreements, the amount of energy to be purchased or the size of the rate impacts from the Joint Petitioners' proposal.<sup>6</sup> We have been asked to approve the Wood PPAs as being in the public interest and the pricing information in those agreements is the most significant aspect of those agreements. Public disclosure of the pricing terms will clearly shed light on the Commission's decision on the merits of Joint

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<sup>6</sup> At the same time, we hasten to add that, based on Joint Petitioners' pre-filed testimony, the total amount of energy to be purchased and the rate impacts are not expected to be insignificant.

Petitioners' proposal. That the Wood PPAs, as designed, are expected to be above-market further reinforces the importance of public disclosure of the pricing information.

Striking the balance in this way is consistent with our recent rulings in *Public Service Company of New Hampshire*, Order No. 25,158 in Docket No. DE 10-195 (October 15, 2010) (ruling on motion for confidential treatment of certain pricing and other information in a power purchase agreement between PSNH and Laidlaw Berlin BioPower, LLC) and *Public Service Company of New Hampshire*, Order No. 25,168 (November 12, 2010) (ruling on motion for rehearing). As OCA points out, the Wood IPPs argued for denial of those motions for confidential treatment and we do not find any substantial reason why those arguments should not apply equally to this case.

The Wood IPPs have a stronger case for confidential treatment of the amount of the Initial Wood Prices specified in each of the Wood PPAs. Public disclosure of that information could undermine the Wood IPPs' ability to negotiate with wood suppliers for the lowest wood prices going forward during the term of the Wood PPAs, and thus harm the Wood IPPs' competitive position with respect to obtaining wood supply, which could, in part, cause PSNH's ratepayers to pay more for the energy to be purchased under the PPAs than they otherwise would. For this reason, we conclude that the appropriate balance tips in favor of non-disclosure of the Initial Wood Prices.

Accordingly, we will deny the motion for confidential treatment of the pricing information<sup>7</sup> except that we will grant the motion with respect to the Initial Wood Prices. The motion also requests confidential treatment for the Wood IPPs' federal tax identification

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<sup>7</sup> Consistent with this ruling, we will deny the letter request filed on September 15, 2011 for confidential treatment of the above-market calculations by PSNH and Staff Advocates in response to Non Advocate Staff 1-12, which include information regarding energy prices and quantity caps in the Wood PPAs.

numbers and bank wire transfer information. The OCA did not oppose confidential treatment of such information and since this information is customarily treated as confidential and is not material to our decision on the merits of the Wood PPAs, we will grant the motion as to such information.

Finally, the motion requests confidential treatment of the redacted portions of Exhibit B attached to the settlement agreement. This exhibit contains details of the closing of the construction financing of the Laidlaw facility in connection with the Wood IPPs' withdrawal of the New Hampshire Supreme Court appeals. By letter from PSNH filed on September 9, 2011, the Commission was notified that the closing had previously occurred on September 2, 2011. The Wood IPPs state that the confidential arrangements described in Exhibit B are not subject to Commission approval. The OCA did not oppose confidential treatment for the redacted portions of Exhibit B. We agree that there is a privacy interest in maintaining the confidentiality of such information and since the confidential agreements made and referred to in Exhibit B do not have to be approved by the Commission and do not affect customers' rates, the public interest in disclosure, if any, is insignificant. We will thus grant the motion as it relates to the redacted portions of Exhibit B attached to the settlement agreement.

## **B. September 15, 2011 Motion for Confidential Treatment**

### **1. Wood IPPs**

On September 15, 2011, the Wood IPPs filed a motion for confidential treatment of part of the Wood IPP responses to Non-Advocate Staff data requests 1-1, 1-2 and 1-18. According to the Wood IPPs, the responses to data requests 1-1 and 1-2 include the descriptive titles and details of financial agreements that are not subject to the Commission's jurisdiction and the

response to data request 1-18 consists of quarterly average wood pricing at each of the five Wood IPP facilities for the calendar years 2009 and 2010, which the Wood IPPs believe was requested to verify the current initial wood prices set forth in each of the Wood PPAs. In addition, they request confidential treatment of their wood pricing information to be viewed by Staff Advocates and Non-Advocate Staff in connection with verifying the initial wood prices pursuant to the terms of the Wood PPAs, including summary reports and backup information containing wood vendor, quantity, price and payment information. Wood IPPs' motion for confidential treatment (September 15, 2011) at 2.

The Wood IPPs' motion describes the three-step analysis that the Commission uses to evaluate whether information claimed as confidential is entitled to confidential treatment. According to the motion, the Wood IPPs have a privacy interest in their wood pricing information and they and the parties to the non-jurisdictional agreements have a privacy interest in the existence and substance of those contracts. Those agreements contain a provision requiring the parties to keep the terms confidential, a provision which is being complied with by filing the motion.

In arguing the second step of the confidentiality analysis, whether the public has an interest in the private information, the Wood IPPs state that the agreements requested in data requests 1-1 and 1-2 are not before the Commission for approval and, consequently, the public has no interest in those agreements, and the wood pricing information provided in response to data request 1-18 is of only limited interest to the public. *Id.* at 3.

Finally, the Wood IPPs argue that the harm to the privacy interests of the Wood IPPs and the parties with whom they have entered into the agreements requested by data requests 1- 1 and



1-2 outweigh any interest that the public may have in disclosure. According to the Wood IPPs, the disclosure of the details and descriptive titles of the agreements 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 agreements and any similar transactions. *Id.* at 4. The Wood IPPs further state that the financial agreements involving Whitefield Power & Light Company and Indeck-Alexandria, LLC are not subject to the Commission's jurisdiction, are with third parties that are not before the Commission, and are not agreements for which Commission approval is sought. The Wood IPPs maintain that the public's interest in disclosure of the agreements is "slight."

Regarding the information in the response to data request 1-18 and the information to be viewed during the verification process, the Wood IPPs argue that publication of the wood price information used in confirming the initial wood pricing under the Wood PPAs will place the Wood IPPs at a competitive disadvantage when seeking to actually secure wood fuel at those initial prices, which would in turn negatively impact both the Wood IPPs and PSNH, as the increase in wood prices would be reflected in the payment provisions of the Wood PPAs. Further, they state that since the Wood PPAs are of limited duration and each is for a relatively small amount of unit contingent power, the fuel price adjustments have a minimal effect on the public while at the same time the short duration of the Wood PPAs places the Wood IPPs at a greater competitive disadvantage in the negotiation of future wood pricing

## **2. Commission Analysis**

The Wood IPPs seek confidential treatment for certain information in their responses to Non Advocate Staff 1-1 and 1-2 regarding agreements between some of them and third parties.

Non-Advocate Staff 1-1 requested information regarding what other consideration, if any, was provided to Whitefield Power & Light Company by any other party in exchange for its agreement to withdraw the Supreme Court Appeals<sup>8</sup> while Non-Advocate Staff 1-2 requested information regarding other “separate agreements” between any of the Wood IPPs and Cate Street as referred to in section 2 of the settlement agreement. The responses to data requests 1-1 and 1-2 include the descriptive titles and details of financial agreements that are not subject to the Commission’s approval authority. Following our customary analytical approach, we find that the Wood IPPs have a legitimate privacy interest in the information in these data responses for which confidential treatment is sought. As to the public interest in disclosure, we find that the information does not bear on the question of whether the Wood PPAs are in the public interest and does not shed light upon the activities of government. We thus conclude that the balance of interests favors confidential treatment of the responses to Non-Advocate Staff 1-1 and 1-2 as requested.

The Wood IPPs also seek confidential treatment of (i) certain information in their responses to Non-Advocate Staff 1-18 regarding quarterly average wood pricing at each of the five Wood IPP facilities for the calendar years 2009 and 2010 and (ii) the wood pricing information viewed by Staff Advocates and Non-Advocate Staff in connection with verifying the initial wood prices pursuant to the terms of the Wood PPAs. In our ruling on the Wood IPPs’ August 23, 2011 motion for confidential treatment, we concluded that the Initial Wood Prices in the Wood PPAs should be granted confidential treatment. Based on the same reasoning and consistent with our ruling, we will grant the motion for confidential treatment as it relates to the quarterly average wood pricing and the wood pricing information viewed in connection with

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<sup>8</sup> Whitefield Power & Light Company is the only one of the Wood IPPs that did not enter into a PPA with PSNH.

verifying the Initial Wood Prices. Inasmuch as the OCA also viewed the wood pricing information together with representatives of Staff Advocates and Non-Advocate Staff, see testimony of Non-Advocate Staff Steven E. Mullen at 11, we will in addition extend protective treatment to such information in OCA's possession.

### **C. October 3, 2011 Motion for Confidential Treatment**

#### **1. Wood IPPs**

On October 3, 2011, the Wood IPPs filed a third motion requesting confidential treatment of their individual responses to OCA 1-5 which asked:

For each IPP for the period Jan 1 – June 30, 2011 please provide total wood chip tonnage purchased and total cost by source state (or province if applicable). If source state (or province) is not known, please use the business address of the trucking company delivering the wood chips as a proxy to identify the source state (or province).

The Wood IPPs again refer to the three-step analysis developed by the New Hampshire Supreme Court in *Lamy* and *Lambert, supra*, and used by the Commission in evaluating motions for confidential treatment. Applying the first step in the analysis, the Wood IPPs assert that they have a privacy interest in the wood fuel source, quantity, and price information for each of the facilities. Wood IPPs' October 3, 2011 motion at 2. Regarding the public's interest in disclosure, the Wood IPPs state that the public has only limited interest in the Wood IPPs' wood source, quantity and pricing information.

Finally, in balancing the interest of privacy with that of disclosure, the Wood IPPs claim that their privacy interest outweighs any interest that the public may have in the information. The Wood IPPs assert that the information is recent and provides a level of detail that would allow vendors and competitors to determine each facility's demand and average wood fuel price. According to the Wood IPPs, disclosure of this information would detrimentally impact the

competitive position of each Wood IPP in future wood purchases similar to publication of the initial wood price information in the Wood PPAs, and on an even more detailed and potentially harmful basis. They conclude that public disclosure would put each Wood IPP at a competitive disadvantage when seeking to actually secure wood fuel at the initial wood prices set forth in each Wood PPA which would also have a negative impact on both the Wood IPPs and PSNH, as any increase in wood prices would be reflected in the payment provisions of the power purchase agreements. *Id.* at 3.

The Wood IPPs characterize the public interest in disclosure of the information relating to wood source, quantity, and pricing as “slight” in this instance. The Wood IPPs point to the limited duration of each of the Wood PPAs and the relatively small amount of unit contingent power to be purchased under them. According to the Wood IPPs, the effect of the limited duration and the small power purchases have minimal effect on the public and therefore lessens the public’s interest in the information. *Id.* at 3-4. At the same time, the Wood IPPs argue that the short duration of the Wood PPAs places the Wood IPPs at a greater competitive disadvantage in the negotiation of future wood pricing both during and after the relatively short term of the Wood PPAs. The Wood IPPs note that the Commission has indicated that if disclosure would harm the competitive position of a person from whom disclosure is obtained, the balance of interests would tend to tip in favor of non-disclosure, citing *National Grid, plc*, Order No. 24,777 (2007).

## **2. Commission Analysis**

The Wood IPPs seek confidential treatment of the information provided in response to OCA 1-5 regarding total wood chip tonnage purchased by each of the Wood IPPs and total cost by source state or province if applicable. Again following our customary analytical approach, we find that

the Wood IPPs have a privacy interest in such information and there is also a public interest in disclosure of such information. In balancing the interests in privacy and public disclosure, we conclude that the cost information should be granted confidential treatment consistent with our reasoning regarding confidential treatment of the Initial Wood Prices. However, the risk of harm to the Wood IPPs' competitive position with the wood suppliers from disclosure of the tonnage and source information is less clear and at the same time such information is directly relevant regarding the extent to which the PPAs may help keep intact the network of jobs that support the biomass industry in the state, a policy argument advanced by the Joint Petitioners to support approval of the Wood PPAs. *See e.g.* pre-filed direct testimony of Commissioner Bald at 4 and pre-filed direct testimony of Staff Advocates at 3-5. Because this information will shed light on our decision as to whether or not the Wood PPAs are in the public interest, we conclude that the tonnage and source information should not be afforded confidential treatment. In summary, we will grant the motion for confidential treatment of the cost information and we will deny it as to information regarding the tonnage and source state or province.

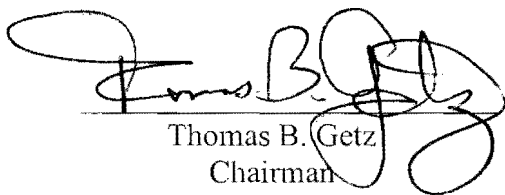
**Based upon the foregoing, it is hereby**

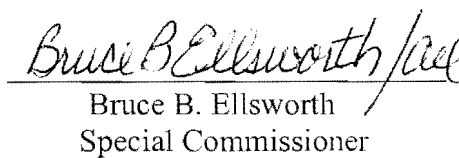
**ORDERED**, that the motions for confidential treatment are granted in part and denied in part, as set forth above, provided that, to the extent the information granted confidential treatment may be publicly disclosed in the future pursuant to FERC requirements, the grant of confidential treatment herein shall be withdrawn at the time of such public disclosure, without further action by the Commission;

**ORDERED**, that protective treatment of the wood pricing information in OCA's possession is granted; and it is

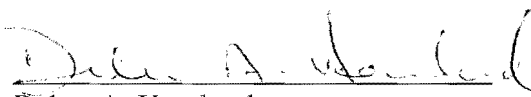
**ORDERED**, that the Joint Petitioners file revised copies of the documents described above, redacted as necessary to comply with this order by no later than the commencement of the hearing on November 30, 2011.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of November, 2011.

  
Thomas B. Getz  
Chairman

  
Bruce B. Ellsworth  
Special Commissioner

Attested by:

  
Debra A. Howland  
Executive Director

**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 #: 11-184-1 Printed: November 23, 2011

**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.