

STAFF - EX. 54 1

Speidel, Alexander

From: eatongm@nu.com
Sent: Tuesday, May 31, 2011 11:46 AM
To: Speidel, Alexander
Subject: Confidentiality and Non-Disclosure Agreement
Attachments: Confidentiality and Non-Disclosure Agreement LAI - NH PUC.doc

ORIGINAL	
N.H.P.U.C. Case No.	DE 10-261
Exhibit No.	Staff-4
Witness	Panel U
DO NOT REMOVE FROM FILE	

Alex:

I hope Staff would be willing to execute the attached Confidentiality and Non-Disclosure Agreement with Levitan and Associates, Inc. If there are any problems, please give me a call.

Jerry Eaton, Senior Counsel
Public Service Company of New Hampshire
Energy Park, 780 North Commercial Street
P. O. Box 330
Manchester, New Hampshire 03105-0330
Tel. (603) 634-2961
Fax. (603) 634-2438

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Confidentiality and Non-Disclosure Agreement

This Confidentiality and Non-Disclosure Agreement (“Agreement”) is made as of March ___, 2011 between and among the parties set forth in Section 1 below.

Section 1 - Parties

The parties to this Agreement are the New Hampshire Public Utilities Commission (“NHPUC”) and Levitan & Associates, Inc. (“LAI”).

Section 2 - Confidentiality

NHPUC acknowledges that (i) LAI has been retained by Public Service Company of New Hampshire (“PSNH”) on matters concerning the Newington Station, (ii) LAI is utilizing models and information that is proprietary, commercially valuable, competitively sensitive, or otherwise of a confidential nature (“Confidential Information”), and (iii) NHPUC has requested and may receive Confidential Information from LAI. Confidential Information may include, but is not limited to: trade secrets, proprietary information, customer information, customer lists, methods, plans, documents, data, drawings, manuals, notebooks, reports, models, inventions, formulas, processes, computer software, software codes, information systems, software authorizing techniques, contracts, negotiations, strategic planning, proposals, business alliances, training and educational materials, and any information concerning the business of PSNH, its affiliates, its customers, and its assets (including but not limited to Newington Station) that is not generally known by the public, regardless of whether such information is in oral, written, machine readable, or other form.

Section 3 – Treatment of Confidential Information

NHPUC, its agents, and its contractors, shall treat all Confidential Information disclosed or provided by LAI as confidential, except information that (i) was in the public domain at the time of disclosure hereunder, (ii) thereafter passes into the public domain, (iii) is lawfully in the possession of NHPUC and not otherwise restricted as confidential prior to the time of disclosure hereunder, or (iv) becomes public through compulsion by a governmental agency or court having jurisdiction over the distribution of such information.

NHPUC shall adopt appropriate procedures and make diligent efforts to restrict access by its employees (including but not limited to its agents, advisors, and contractors) to Confidential Information to those persons whose knowledge and input is reasonably necessary for the performance of its work. Such procedures shall include but not be limited to assuring that each employee receiving Confidential Information is familiar with the terms of this Agreement and acknowledges that he or she is bound by them. NHPUC will exercise due care in protecting the confidentiality of the Confidential Information, to at least the same extent as it protects its own confidential information.

NHPUC will not disclose any Confidential Information in its possession or control to any non-party to this Agreement without the express prior written consent of LAI, each of whom shall be required to execute a similar agreement to this Agreement as described hereunder. In the event that NHPUC is required by law to disclose any Confidential Information to any person or entity, NHPUC shall first inform LAI of the requirement for disclosure and shall make reasonable efforts to obtain an agreement or protective order requiring the maintenance of the confidentiality of any Confidential Information in accordance with this Agreement.

Section 4 – Reporting Requirements

NHPUC will report all improper disclosure of Confidential Information to Richard Carlson of LAI at (617) 531-2818 immediately upon discovery of such improper disclosure. In the event NHPUC enters into any agreement with any person or entity that is not party to this Agreement and such agreements require LAI to provide Confidential Information to such person or entity, NHPUC shall require such person or entity (i) to execute a confidentiality and non-disclosure agreement with LAI and (ii) to abide by the terms of such confidentiality and non-disclosure agreement.

Section 5 – Title and Rights

NHPUC agrees that nothing within this Agreement shall be construed to grant to the NHPUC title, copyright, or any other proprietary rights in the Confidential Information, all of which shall remain vested with LAI. NHPUC further agrees to return all Confidential Information to LAI if so requested, within fifteen (15) days after receipt of written request from LAI. Thereupon, NHPUC will destroy all copies of the Confidential Information and will certify to LAI in writing that it has done so.

Section 6 - Term

This Agreement shall take effect upon the date hereof and NHPUC’s obligations for Confidential Information shall persist for three (3) years following disclosure of such Confidential Information by LAI to NHPUC.

IN WITNESS WHEREOF the parties hereto have caused their representatives to execute and deliver this Agreement as of the date set forth above.

Levitan & Associates, Inc.

New Hampshire Public Utilities Commission

By: _____

By: _____

(Name and Title)

(Name and Title)

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Speidel, Alexander

From: Speidel, Alexander
Sent: Tuesday, May 31, 2011 4:41 PM
To: eatongm@nu.com
Cc: McCluskey, George
Subject: RE: Confidentiality and Non-Disclosure Agreement

Jerry,

As a general matter, the Commission does not enter into such agreements. Staff, and Staff's consultant, Ed Arnold of Jacobs Consulting (as Staff's agent) are bound by our obligation under PUC rules and statutes to guard confidential proprietary information submitted/provided by regulated utilities and their agents (in this instance, Levitan). Furthermore, we cannot contract away our obligations under RSA 91-A through such an instrument.

In relation to the Staff follow-up items tendered to you last Friday, George and Ed need answers to these materials before they come to Levitan for the visit this Friday. Also, I plan to attend to help out and answer questions as needed. Could you confirm that the Levitan offices are in the 100 Summer Street building in Boston?--- the exact floor would be helpful to know as well.

Many thanks, Alex

Alexander F. Speidel, Esq.
Staff Attorney/Hearings Examiner
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429
(603) 271-6016
Alexander.Speidel@puc.nh.gov

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Tel. (603) 634-2961
Fax. (603) 634-2438

Speidel, Alexander

From: eatongm@nu.com
Sent: Wednesday, June 01, 2011 3:35 PM
To: Speidel, Alexander
Cc: RLC@levitan.com; menarel@nu.com; whitefb@nu.com; hallsr@nu.com; largetj@nu.com
Subject: *Confidential: Friday Meeting, Confidentiality and Non-Disclosure Agreement, Discovery responses
Attachments: Confidentiality and Non-Disclosure Agreement LAI - Jacobs Consultancy.doc; Letter reserving rights to file Mot for Protective Order.doc

Levitan Associates are at 100 Summer St, Suite 3200 (32nd floor), located near South Station in the financial district. Levitan will provide their security with a list of names, Edward Arnold, George McCluskey and Alexander Speidel (anyone else?). Frederick White, Erica Menard and I will attend. We can be ready to go anytime after 8:30am.

Staff experts routinely execute non-disclosure agreements with PSNH. Liberty Consulting and later Accion Group (Mike Cannata) executes non-disclosure agreements when doing energy service reconciliation investigations. Jacobs Consultancy executed a very restrictive nondisclosure agreement with PSNH in regards to the review of the scrubber project at Merrimack Station because a sister company, Jacobs Engineering, is a direct competitor to many of the contractors at the scrubber project.

Could we modify the Confidentiality and Non-Disclosure Agreement to apply only to Jacobs Consultancy? PSNH could then file a letter with the Commission much like the attached draft, supported by the Staff, to reserve our rights to file a motion for confidential treatment with respect to confidential disclosures during our discussions. I hope to resolve this matter of confidentiality by close of business tomorrow so that we can use our time most productively on Friday.

The computer disk with the data supporting LAI-MOD-01-12, 01-21, 01-22 and 01-029 is being brought to you this afternoon. Responses to the remaining requests should be sent electronically during the day tomorrow.

Let's be sure to touch base early tomorrow by phone to discuss any outstanding issues.

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Speidel, Alexander

From: Speidel, Alexander
Sent: Wednesday, June 01, 2011 3:59 PM
To: eatongm@nu.com; McCluskey, George; edward.arnold@jacobs.com
Cc: RLC@levitan.com; menarel@nu.com; whitefb@nu.com; hallsr@nu.com; largetj@nu.com
Subject: RE: *Confidential: Friday Meeting, Confidentiality and Non-Disclosure Agreement, Discovery responses

Importance: High

Jerry,

Thanks for turning this around, and for sending along the computer disk with the responses to our additional questions this afternoon.

Having Jacobs sign a non-disclosure agreement is different kettle of fish, and would be fine with Staff. However, Staff would need to have the following modifications made to the draft agreement, to prevent overbroad consequences that could restrict Ed Arnold's ability to provide information to Staff and the Commissioners. I have put these modifications below my signature block. I have included the OCA in the ambit of information sharing, as OCA has a separate non-disclosure agreement with PSNH, and OCA may be interested in Staff's/Ed Arnold's general views regarding its visit at Levitan.

As for your letter to Debra Howland, I would insist on the following modification before Staff can give its concurrence (again, below the signature block). Note the stricken language and its replacement. We can definitely talk tomorrow morning to hammer out outstanding issues. If you could please specify a time tomorrow morning, that would be most appreciated, so that George McC. can sit in and answer questions as needed. Many thanks, Alex Speidel

Alexander F. Speidel, Esq.
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New Hampshire Public Utilities Commission
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(603) 271-6016
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Section 3 – Treatment of Confidential Information

Jacobs will not disclose any Confidential Information in its possession or control to any non-party to this Agreement, **with the exception of Staff, the Commissioners of the New Hampshire Public Utilities Commission (Commissioners), and the Office of the Consumer Advocate (OCA)**, without the express prior written consent of LAI and PSNH, each of whom shall be required to execute a similar agreement to this Agreement as described hereunder. In the event that Jacobs is required by law to disclose any Confidential Information to any person or entity, **Staff, Commissioners, and OCA excepted**, Jacobs and/or shall first inform LAI and PSNH of the requirement for disclosure and shall make reasonable efforts to obtain an agreement or protective order requiring the maintenance of the confidentiality of any Confidential Information in accordance with this Agreement.

Section 4 – Reporting Requirements

Jacobs and Staff will report all improper disclosure of Confidential Information to Richard Carlson of LAI at (617) 531-2818 immediately upon discovery of such improper disclosure. In the event Jacobs enters into any agreement with any person or entity that is not party to this Agreement, **with the exception of Staff, Commissioners, and OCA**, and such agreements require LAI to provide Confidential Information to such person or entity, Jacobs shall require such person or entity (i) to execute a confidentiality and non-disclosure agreement with LAI and (ii) to abide by the terms of such confidentiality and non-disclosure agreement.

Letter to Debra Howland

Pursuant to Puc §201.04(a) (interim rules) documents to submitted to Staff become public documents upon the date and time of submission, and under Puc §102.06 a “document” includes an electronic record. Pursuant to Puc §203.08 (d), PSNH is reserving its right to file a motion for confidential treatment for any Confidential Information which may be submitted to Staff during these discussions. We expect any information disclosed during discussions with Levitan ~~the~~ will be kept confidential pursuant to Puc § 203.08(e) **pending a Commission motion on the information’s confidentiality under RSA 91-A** and Staff will consult with PSNH prior to filing any testimony or other documents in this proceeding containing Confidential Information. This proposal is acceptable to Staff.

From: eatongm@nu.com [mailto:eatongm@nu.com]
Sent: Wednesday, June 01, 2011 3:35 PM
To: Speidel, Alexander
Cc: RLC@levitan.com; menarel@nu.com; whitefb@nu.com; hallsr@nu.com; largetj@nu.com
Subject: *Confidential: Friday Meeting, Confidentiality and Non-Disclosure Agreement, Discovery responses

Levitan Associates are at 100 Summer St, Suite 3200 (32nd floor), located near South Station in the financial district. Levitan will provide their security with a list of names, Edward Arnold, George McCluskey and Alexander Speidel (anyone else?). Frederick White, Erica Menard and I will attend. We can be ready to go anytime after 8:30am.

Staff experts routinely execute non-disclosure agreements with PSNH. Liberty Consulting and later Accion Group (Mike Cannata) executes non-disclosure agreements when doing energy service reconciliation investigations. Jacobs Consultancy executed a very restrictive nondisclosure agreement with PSNH in regards to the review of the scrubber project at Merrimack Station because a sister company, Jacobs Engineering, is a direct competitor to many of the contractors at the scrubber project.

Could we modify the Confidentiality and Non-Disclosure Agreement to apply only to Jacobs Consultancy? PSNH could then file a letter with the Commission much like the attached draft, supported by the Staff, to reserve our rights to file a motion for confidential treatment with respect to confidential disclosures during our discussions. I hope to resolve this matter of confidentiality by close of business tomorrow so that we can use our time most productively on Friday.

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Fax. (603) 634-2438

eatongm@nu.com ***** This



Speidel, Alexander

From: Speidel, Alexander
Sent: Wednesday, June 01, 2011 4:01 PM
To: McCluskey, George; edward.arnold@jacobs.com
Subject: FW: *Confidential: Friday Meeting, Confidentiality and Non-Disclosure Agreement, Discovery responses
Attachments: Confidentiality and Non-Disclosure Agreement LAI - Jacobs Consultancy.doc; Letter reserving rights to file Mot for Protective Order.doc
Importance: High

George and Ed:

These are the actual documents discussed in my e-mail that I just sent. Anne Ross gave me the go-ahead to have Ed/Jacobs Consulting enter into a non-disclose, but as you've seen, I've told Jerry to make modifications to enable us to share info among ourselves, Commissioners, and OCA as well. We'll see how he responds to my modifications. Also George, can you be on deck tomorrow morning for a call from Jerry? I told him to give us a specific time.

Thanks, Alex

Alexander F. Speidel, Esq.
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Confidentiality and Non-Disclosure Agreement

This Confidentiality and Non-Disclosure Agreement ("Agreement") is made as of June ___, 2011 between and among the parties set forth in Section 1 below.

Section 1 - Parties

The parties to this Agreement are the Jacobs Consultancy ("Jacobs") working on behalf of the Staff of the New Hampshire Public Utilities Commission ("Staff") and Levitan & Associates, Inc. ("LAI").

Section 2 - Confidentiality

Jacobs acknowledges that (i) LAI has been retained by Public Service Company of New Hampshire ("PSNH") on matters concerning the Newington Station, (ii) LAI is utilizing models and information that is proprietary, commercially valuable, competitively sensitive, or otherwise of a confidential nature ("Confidential Information"), and (iii) Jacobs has requested and may receive Confidential Information from LAI. Confidential Information may include, but is not limited to: trade secrets, proprietary information, ~~customer information, customer lists~~, methods, plans, documents, data, drawings, manuals, notebooks, reports, models, inventions, formulas, processes, computer software, software codes, information systems, software authorizing techniques, contracts, ~~negotiations~~, strategic planning, proposals, business alliances, training and educational materials, and any information concerning the business of PSNH, its affiliates, its customers, and its assets (including but not limited to Newington Station) that is not generally known by the public, regardless of whether such information is in oral, written, machine readable, or other form.

Section 3 – Treatment of Confidential Information

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Jacobs shall adopt appropriate procedures and make diligent efforts to restrict access by its employees (including but not limited to its agents, advisors, and contractors) to Confidential Information to those persons whose knowledge and input is reasonably necessary for the performance of its work. Such procedures shall include but not be limited to assuring that each employee receiving Confidential Information is familiar with the terms of this Agreement and acknowledges that he or she is bound by them. Jacobs will exercise due care in protecting the confidentiality of the Confidential Information, to at least the same extent as it protects its own confidential information.

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Jacobs will not disclose any Confidential Information in its possession or control to any non-party to this Agreement without the express prior written consent of LAI and PSNH, each of whom shall be required to execute a similar agreement to this Agreement as described hereunder. In the event that Jacobs is required by law to disclose any Confidential Information to any person or entity, Jacobs and/or shall first inform LAI and PSNH of the requirement for disclosure and shall make reasonable efforts to obtain an agreement or protective order requiring the maintenance of the confidentiality of any Confidential Information in accordance with this Agreement.

Section 4 – Reporting Requirements

Jacobs and Staff will report all improper disclosure of Confidential Information to Richard Carlson of LAI at (617) 531-2818 immediately upon discovery of such improper disclosure. In the event Jacobs enters into any agreement with any person or entity that is not party to this Agreement and such agreements require LAI to provide Confidential Information to such person or entity, Jacobs shall require such person or entity (i) to execute a confidentiality and non-disclosure agreement with LAI and (ii) to abide by the terms of such confidentiality and non-disclosure agreement.

Section 5 – Title and Rights

Jacobs agrees that nothing within this Agreement shall be construed to grant to the Jacobs title, copyright, or any other proprietary rights in the Confidential Information, all of which shall remain vested with LAI. Jacobs further agrees to return all Confidential Information to LAI if so requested, within fifteen (15) days after receipt of written request from LAI. Thereupon, Jacobs will destroy all copies of the Confidential Information and will certify to LAI in writing that it has done so.

Section 6 - Term

This Agreement shall take effect upon the date hereof and Jacobs' obligations for Confidential Information shall persist for three (3) years following disclosure of such Confidential Information by LAI to Jabcobs.

IN WITNESS WHEREOF the parties hereto have caused their representatives to execute and deliver this Agreement as of the date set forth above.

Levitan & Associates, Inc.

Jacobs Consultancy

By: _____

By: _____

(Name and Title)

(Name and Title)

Speidel, Alexander

11

From: eatongm@nu.com
Sent: Wednesday, June 01, 2011 5:03 PM
To: Speidel, Alexander
Cc: edward.arnold@jacobs.com; menarel@nu.com; whitefb@nu.com; McCluskey, George; RLC@levitan.com; hallsr@nu.com; largetj@nu.com
Subject: *Confidential: RE: Friday Meeting, Confidentiality and Non-Disclosure Agreement, Discovery responses

I think we're almost there. Your additions are acceptable to PSNH. The only detail is whether communications containing Confidential Information from Ed Arnold to Staff, Commissioners or OCA become public when they pass the Commission's doors.

Could we add one sentence that continues the confidential nature of the information communicated from Jacobs?

Section 3 – Treatment of Confidential Information

Jacobs will not disclose any Confidential Information in its possession or control to any non-party to this Agreement, with the exception of Staff, the Commissioners of the New Hampshire Public Utilities Commission (Commissioners), and the Office of the Consumer Advocate (OCA), without the express prior written consent of LAI and PSNH, each of whom shall be required to execute a similar agreement to this Agreement as described hereunder. **Any portions of communications with Staff, Commissioners and the Office of Consumer Advocate containing Confidential Information shall also be confidential pursuant to Puc 203.08(e) pending a Commission decision on any motion on the information's confidentiality under RSA 91-A.** In the event that Jacobs is required by law to disclose any Confidential Information to any person or entity, Staff, Commissioners, and OCA excepted, Jacobs and/or shall first inform LAI and PSNH of the requirement for disclosure and shall make reasonable efforts to obtain an agreement or protective order requiring the maintenance of the confidentiality of any Confidential Information in accordance with this Agreement.

Can we agree to talk at 9:30 Thursday morning?

Jerry Eaton, Senior Counsel
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12

Speidel, Alexander

From: Speidel, Alexander
Sent: Thursday, June 02, 2011 8:21 AM
To: eatongm@nu.com
Cc: edward.arnold@jacobs.com; menarel@nu.com; whitefb@nu.com; McCluskey, George; RLC@levitan.com; hallsr@nu.com; largetj@nu.com
Subject: RE: *Confidential: RE: Friday Meeting, Confidentiality and Non-Disclosure Agreement, Discovery responses

Jerry,

That is a good add. We are ok with that being added. When you send along the revised Agreement, I will make sure that Ed Arnold or his responsible corporate officer signs it before COB today. The sooner the better for turnaround, of course, Ed needs to get his superiors comfortable with this.

Thanks, Alex

Alexander F. Speidel, Esq.
Staff Attorney/Hearings Examiner
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Cc: edward.arnold@jacobs.com; menarel@nu.com; whitefb@nu.com; McCluskey, George; RLC@levitan.com; hallsr@nu.com; largetj@nu.com
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