

**THE STATE OF NEW HAMPSHIRE**  
**before the**  
**PUBLIC UTILITIES COMMISSION**

Public Service Company of New Hampshire's  
Petition for Approval Power Purchase Agreements with  
Lempster Wind, L.L.C.

Docket No. DE 08-077

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S**  
**OBJECTION TO CONSTELLATION'S MOTION TO COMPEL,**  
**OBJECTION TO CONSTELLATION'S MOTION TO MAKE**  
**LEMPSTER WIND, LLC A MANDATORY PARTY,**  
**AND**  
**MOTION TO WITHDRAW CONSTELLATION'S GRANT OF INTERVENOR**  
**STATUS**

Public Service Company of New Hampshire ("PSNH") hereby objects to the "Motion to Compel Public Service Company of New Hampshire to Respond to Constellation's Data Requests" filed by Constellation New Energy, Inc. and Constellation Energy Commodities Group, Inc. ("Constellation") on August 5, 2008. PSNH further objects to the "Motion to Make Lempster Wind LLC a Mandatory Party" filed by Constellation on August 12, 2008. Finally, pursuant to RSA 541-A:32 and Rule Puc 203.17, PSNH moves that the Commission withdraw the grant of intervenor status of Constellation, as they have failed to demonstrate that their "rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law" and their continued status as a party intervenor is contrary to the "interests of

justice and the orderly and prompt conduct of the proceedings.” In support of its objections and motion, PSNH says the following:

I. PSNH’s OBJECTION TO CONSTELLATION’S MOTION TO COMPEL

A. The information Constellation has requested is not reasonably related to the discovery of admissible evidence because the information is outside of the scope of this proceeding. As further explained below, the information sought by Constellation is beyond the interests it noted in its Petition for Intervention. Furthermore, its discovery questions are thinly-veiled attempts to obtain competitively sensitive commercial information not relevant to the scope of this proceeding. Granting Constellation’s Motion to Compel would unreasonably expand the scope of this proceeding, and any future proceedings to approve any multi-year REC purchase agreements under RSA 362-F:9, to include an interminable investigation of “the reasonably expected renewable portfolio requirements and default service needs to the extent of such requirements” RSA 362-F:9,I. The Commission did not feel obligated to conduct such an extended review of PSNH’s compliance plans when it approved the purchased power and renewable energy certificate arrangements with the Pinetree Power projects. Docket DE 07-125. Instead of simply evaluating the agreements submitted to the Commission for review, Constellation argues that the Commission must evaluate the entire gamut of issues related to the procurement of renewable energy certificates by PSNH including:

**Request No. 1-1** All “. . . steps taken by PSNH to obtain renewable energy certificates . . .”

**Request No. 1-5** “. . .the price of renewable energy certificates during the period [fifteen years]when the arrangement with the Lempster project will be in effect.”

**Request 1-13** Production of renewable energy certificates from Schiller Unit 5 from 2008 and thereafter [until retirement?] and how that compares to PSNH's renewable energy portfolio requirements [through 2023?]

**Request No 1-15** The number and class of any other renewable energy certificates which PSNH may be entitled to acquire under other purchase power arrangements.

**Request No. 1-24** Whether PSNH considered an RFP process for acquiring renewable energy certificates and what was behind its decision making to conduct or not conduct such a process at this time.<sup>1</sup>

The question is whether the Commission is required to review the Lempster arrangements in a reasonable manner or whether “the Commission is charged with conducting a broad, multifaceted analysis of PSNH’s proposed contracts in this [and every other] case to determine whether the contracts are in the public interest and, in particular, are necessary ‘to meet the reasonably expected renewable portfolio requirements and default service needs to the extent of such requirements’” Constellation Motion to Compel (“Motion”) at Para 8.

B. Mr. Wicker’s testimony already explains that PSNH entered into these arrangements to satisfy the *reasonably projected renewable portfolio requirements* during the contract period, as specified in RSA 369-F:9. See, Wicker Pre-filed Testimony at p. 1. PSNH is not required to explain, hour by hour, the Company’s needs and prices for RECs during the entire Lempster contract term. The requests go far beyond the scope of review for *reasonably* projected renewable portfolio requirements. PSNH does not currently have all the RECs or default service supplies it needs; therefore, acquiring RECs and power from Lempster is reasonable. The price for the RECs is less than the alternative compliance payment; therefore, the price is *prima facie* reasonable. Further investigation is

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<sup>1</sup> In responding to Constellation’s Requests Nos. 2-7 and 2.8, PSNH reserved its objection to the requests on the grounds of reasonableness; however, PSNH provided a response to each question.

unnecessary and a waste of the resources of all concerned, except for those parties such as Constellation who also must acquire and supply RECs and power.

C. In Paragraph 9 of its Motion, Constellation states that the requests to which PSNH objected are all related to the issues of what are

PSNH's reasonable expected renewable portfolio requirements, the number of renewable energy certificates ("RECs") that PSNH either has procured or will need to procure during the period [15 years] that the Lempster agreements will be in effect, the specific steps that PSNH has taken to meet those requirements and/or information in PSNH's possession or control that would enable the Commission to compare the cost of the RECs to their projected market cost/value.

These issues are outside the scope of interests that formed Constellation's basis for intervenor status. In its Petition for Intervention, Constellation notes the following interests:

- As a wholesale electric supplier, CCG has an interest in providing electric power to PSNH. (para. 2)
- Both CCG and CNE have an interest in the development of an efficient competitive electric market in New Hampshire. (para. 4).

The petition claims that other issues are raised, but these are the only "interests" noted in Constellation's intervention petition. As noted below in the discussion of PSNH's Motion to Withdraw Constellation's Grant of Intervenor Status, Constellation's attempt to abuse the discovery process should not be condoned.

D. Response to Paragraph 11. Confidential Information. The Commission has already granted PSNH's Motion for Protective Order which begs the question of why Constellation keeps asking for this same information. Constellation proposes that PSNH go through this exercise and provide unredacted responses to the Staff and the Office of Consumer Advocate ("OCA"). The Commission Staff and OCA already have most of the information being sought by Constellation by virtue of their possession of unredacted copies of the contracts and testimony. Therefore, PSNH's completion of the tasks requested by Constellation is unnecessary and burdensome.

II. PSNH's OBJECTION TO CONSTELLATION'S MOTION TO MAKE LEMPSTER WIND, LLC A MANDATORY PARTY

A. By Motion dated August 12, 2008, Constellation seeks an order compelling Lempster Wind, LLC, to be made a mandatory party to this proceeding. The sole purpose of requesting such mandated party status is to force Lempster Wind, LLC to be subject to discovery. PSNH objects to this motion because: (1) the participation of Lempster Wind, LLC is not necessary for the Commission to fulfill its duties under RSA 362-F:9; (2) Lempster Wind, LLC is not a utility subject to the Commission's jurisdiction; and (3) Constellation's motion is duplicitous as it seeks a mandate that would result in one competitive market entity being a mandatory party subject to discovery while Constellation, also a competitive market entity which voluntarily petitioned for such party status, routinely argues that it is not subject to those same discovery standards.

B. Constellation cites no legal authority whatsoever for its Motion. Pursuant to RSA 362:4-c. Lempster Wind, LLC is not a public utility. Nor has Lempster Wind, LLC requested authority from the Commission to be a Competitive Electric Power Supplier ("CEPS") under Chapter Puc 2000 of the Commission's administrative rules (a status held by Constellation). Therefore, Lempster Wind, LLC is not subject to the Commission's plenary authority of RSA 365:5. The Commission has no authority to compel the participation Lempster Wind, LLC, in this proceeding.

C. Even if the Commission determines that it indeed has the authority to compel the mandatory participation of Lempster Wind, LLC as a party in this proceeding, it should not require such participation. Constellation claims that its intervention in this proceeding is based in part on "issues relating to the development of a competitive electric market in New Hampshire...." Constellation Petition to Intervene, para. 6. In its Motion to Make Lempster Wind LLC a Mandatory Party,

Constellation claims that the PSNH-Lempster arrangement has the potential to “negatively affect the formation of a competitive market in New Hampshire.” If Constellation indeed desires the development of a competitive electric market in this state, and is adverse to anything that might negatively affect the formation of such a market, it would not be asking the Commission to compel the involuntary participation of a non-regulated merchant generator as a party in this Commission proceeding in order to require that market participant to be subject to discovery. If the Commission decides that merchant generators can be compelled to become parties in its administrative proceedings, and involuntarily forced to open their books and records as part of a proceeding’s discovery process, it would create an environment hostile to such merchant generators. PSNH deems it unlikely that any merchant generator would be desirous of doing business in such a state. Thus, the very thing that Constellation is requesting is antithetical to the competitive market formation it claims it wants to protect.

D. It is clear that Constellation, a non-regulated market participant that voluntarily sought party status in this proceeding believes that it is not subject to the very same discovery process that it claims Lempster Wind, LLC must endure. The Commission should note how Constellation dances around this issue in paragraph 7 of its Motion to Make Lempster Wind LLC a Mandatory Party. Clearly, Constellation is implying that a full party to a Commission proceeding is not subject to discovery if it unilaterally decides not to file testimony. PSNH takes issue with this position, as the Commission’s rules at Rule Puc 203.09 (a) and (b) clearly state that “The petitioner, the staff of the commission, the office of consumer advocate and any person granted intervenor status...***shall have the right to serve upon any party***, data requests, which may consist of a written interrogatory or request for production of documents.” (Emphasis added.)

E. The reluctance of merchant generators to provide commercial and financial information to the Commission has a long history. This issue was the subject of

federal litigation in *Bristol Energy Corp. v. N.H. PUC*, 13 F.3d 471 (1994). In that case, the First Circuit Court of Appeals held that absent express federal law to the contrary, under PURPA qualifying facilities (QFs) are exempt from State law or regulation respecting financial and organizational regulation, and therefore they cannot be compelled to provide such information to the Commission. The Lempster Wind project shall be a QF under PURPA.

F. At a minimum, if the Commission were to consider granting Constellation's motion, as a matter of fairness it must require that Constellation (and Freedom) be similarly subject to the same rigors of discovery as Lempster Wind, LLC. This would be consistent with both the Commission's rules of practice and with RSA 374-F:3, which requires, "The rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market." Constellation should have no objection to this, because it has already stated that the provision of such information would not provide any sort of competitive advantage:

We have originators out in the field who are negotiating contracts with prospective renewable developers and renewable developments that are about to come on line all the time. They clearly know what, you know, what we're willing to pay for RECs and energy. So, I don't see why having the information about the Lempster project gives us any sort of competitive advantage of the marketplace. We have all sorts of knowledge in-house on that kind of thing already. (Transcript, Thomas Bessette, June 27, 2008, p. 29,

### III. MOTION TO WITHDRAW CONSTELLATION'S GRANT OF INTERVENOR STATUS

A. Participation as an intervenor in any Commission proceeding is governed by RSA 541-A:32 and Rule Puc 203.17. To qualify for intervenor status, a petitioner must demonstrate that "rights, duties, privileges, immunities or other substantial

interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law” and that “the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired”.

Constellation’s conduct throughout this proceeding demonstrates that it fails to meet these requirements. Hence, PSNH moves that the Commission withdraw its grant of intervenor status to Constellation.

B. In its Petition for Intervention, Constellation notes the following interests:

- As a wholesale electric supplier, CCG has an interest in providing electric power to PSNH. (para. 2)
- Both CCG and CNE have an interest in the development of an efficient competitive electric market in New Hampshire. (para. 4).

The petition claims that other issues are raised, but these are the only “interests” noted in Constellation’s intervention petition. That petition does not note any “rights, duties, privileges, immunities” that may be affected, nor does Constellation allege that it “qualifies as an intervenor under any provision of law,”.

Constellation’s interests fail to provide an adequate basis under RSA 541-A:32, I, (b) to qualify for intervenor status in this proceeding. Moreover, Constellation’s interest in being a wholesale supplier of electric power to PSNH is not material to the Commission’s scope of review in this proceeding under RSA 362-F:9.

Constellation’s pursuit of its other claimed interest is certainly contrary to the principle of “full and fair competition” in RSA 374-F:3 discussed above. In the past, the Commission has rejected requested intervenor status under RSA 541-A:32, holding, “It should be recognized that merely being interested in such a proceeding is not the same as having a legal interest of some nature that may be affected by the proceeding.” *North Atlantic Energy Corporation*, 87 NHPUC 455 (2002).

Constellation’s “interests” in this instant proceeding do not rise to the level

necessary for continued intervenor status under RSA 541-A:32 and Rule Puc 203.17.

C. At this point in the proceeding it has now become plainly evident that Constellation's further participation is contrary to "the interests of justice and the orderly and prompt conduct of the proceeding." RSA 541-A:32, I, (c), Constellation's discovery questions, its Motion to Compel Responses, and its Motion to Make Lempster Wind LLC a Mandatory Party all reveal its true motivation in this proceeding - - it seeks to obtain sensitive confidential commercial information from both PSNH and Lempster Wind, LLC. Constellation has as much as said this via its claimed interest in "providing electric power to PSNH." As noted earlier, its other claimed interest of protecting the competitive electric market is belied by the negative impact its actions in this docket would have on that market. Fishing for competitive commercial data via discovery as an intervenor in this proceeding does not further the "interests of justice" - - especially when Constellation also asserts that it is not subject to that same discovery process. See, Transcript, Thomas Bessette, June 27, 2008, pp. 29-30. Constellation's abuse of the discovery process is additionally evident from the number and nature of its discovery requests. Constellation, despite its stated limited interests, propounded more discovery requests than both Staff and OCA combined. Despite the grant of PSNH's Motion for Protective Order at the prehearing conference, Constellation repeatedly asks for confidential information. Constellation itself noted its "large number of requests." Motion to Compel, para. 12.

D. If Constellation is allowed to continue as an intervenor in this proceeding, the purpose of the RPS statute will be thwarted as well. Constellation's conduct in this proceeding may very well deter other renewable energy developers from entering into arrangements with New Hampshire distribution companies for the sale of power and RECs if those developers believe that their intensely competitive operations will be probed in regulatory proceedings from which they are exempt by

virtue of their non-public utility status.

E. The “orderly and prompt conduct of the proceeding” is also challenged by Constellation’s prayer that the Commission extend the procedural schedule for this docket. Motion to Make Lempster Wind LLC a Mandatory Party, p. 3. Delaying the proceeding for Constellation’s dubious motives is the opposite of what is required of an intervenor per RSA 541-A:32.

F. This proceeding should not be turned into a process wherein Constellation is allowed to distort full and fair competition by seeking to obtain competitive information from PSNH and Lempster Wind, LLC. PSNH has attached hereto Constellation’s three sets of questions. A review of these 55 questions clearly reveals the broad net Constellation has cast in its quest to obtain competitively sensitive commercial information. If allowed to continue, Constellation’s conduct clearly diminishes PSNH’s interest in entering into future multi-year arrangements with renewable resource suppliers; as noted earlier, it would also likely dissuade other merchant generators from wanting to enter the New Hampshire market.

#### IV. CONCLUSION:

“It is . . . in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities.” RSA 362-F:1. Investment in such technologies may be facilitated by providers of electricity entering into multiyear agreements to purchase the RECs produced by new or existing facilities and in some cases the power produced by such facilities by providing a more assured stream of revenues for investors and financing entities. Providers of electricity are not required to enter into multiyear arrangements with REC producers. If the purpose of RSA 362-F:9 is to encourage multiyear contracts for the purchase of RECs and power or just RECs from new renewable resources, then Constellation is doing its

best to thwart PSNH from ever entering into any other multi-year agreements. The purpose of the statute will be thwarted as well.

WHEREFORE, PSNH respectfully requests the Commission issue an order denying Constellation's Motion to Compel, issue and order denying Constellation's Motion to Make Lempster Wind LLC a Mandatory Party, grant PSNH's Motion to Withdraw Constellation's Grant Of Intervenor Status, and to order such further relief as may be just and equitable.

Respectfully submitted,

**Public Service Company of New Hampshire**

August 15, 2008  
Date

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STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Re: Public Service Company of New Hampshire

DE 08-077

**Data Requests Propounded by Constellation NewEnergy, Inc. and Constellation  
Energy Commodities Group, Inc. to PSNH**

Please respond to the following data requests in accordance with the timeframe provided by the rules of the Public Utilities Commission. Copies of all responses and related documents that are provided electronically should be sent to:

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Any bulk materials that are provided in hard copy only should be provided to Mr.

Camerino at the address noted above.

**Definitions, Form, and Content of Data Responses**

1. "Document" or "documents" refers to all writings and records complete or partial of every type in your possession, control, or custody, including but not limited to: testimony and exhibits, memoranda, correspondence, letters, reports (including drafts, preliminary, intermediate, and final reports), surveys, analyses, studies (including economic and market studies), summaries, comparisons, tabulations, charts, books, pamphlets, photographs, maps, bulletins, corporate or other minutes, notes, diaries, log sheets, ledgers, transcripts, microfilm, microfiche, computer data, computer files, computer diskettes, computer tapes, computer inputs, computer outputs and printouts, vouchers, accounting statements, budgets,

workpapers, engineering diagrams (including "one-line" diagrams), mechanical and electrical recordings, telephone and telegraphic communications, speeches, and all other records, written, electrical, mechanical, or otherwise and drafts of any of the above.

2. "Lempster project" refers to Lempster Wind, LLC and any predecessor entity and includes the business conducted by Lempster Wind, LLC and any predecessor entity that conducted such business, as well as any affiliate or agent acting on behalf of or with regard to the interests of such business.
3. For each response, please identify the individual who will be responsible for cross-examination concerning each request.
4. If requested data is entirely duplicative of that furnished in response to another data request in this proceeding, it is only necessary to identify the response where the information is contained. **However, if the requested data was filed in another proceeding, please provide a copy with your response in this case.**
5. If any data request is unclear or imprecise, **please request clarification**, by telephone, from the above-identified individual, prior to furnishing unnecessary data or an inadequate response. Similarly, if you do not believe that a data request is relevant to this proceeding, **please inquire first by telephone** before refusing to answer the data request.
6. If you cannot answer a data request in full, after exercising due diligence to secure the information necessary to do so, state the answer to the extent possible, state why you cannot answer the data request in full, and state what information or knowledge you have concerning the unanswered portions.
7. These data requests are continuing in nature and require supplemental responses when further or different information with respect to the same is obtained.
8. Please reprint each request with your response to that request beginning on a separate page.
9. **If a data request requires you to perform a calculation or otherwise create work product that does not currently exist and it is PSNH's position that PSNH is not required to perform the calculation or create the work product, please provide all information in PSNH's possession or control that is necessary to perform the calculation or create the work product, rather than providing a non-responsive answer.**

### Data Requests

1. Set forth all steps PSNH has taken to obtain renewable energy certificates (including the approximate date when such steps were taken) to meet the renewable energy portfolio standard requirements of RSA 362-F. If PSNH has issued any requests for proposals or other solicitations to procure renewable energy certificates, please provide a copy of any documents concerning or reflecting such requests or solicitations.
2. Please provide any documents in PSNH's possession or control that include a projection of its renewable portfolio requirements or default service needs for any period after January 1, 2008.
3. Please describe all steps that PSNH took to ensure or determine that the transaction proposed in this docket would lead to the efficient and cost-effective realization of the purposes and goals of RSA 362-F. Please provide all supporting documents.
4. Does PSNH have any projections of the portion of its distribution load that will receive electric supply service from competitive suppliers during the period when the Power Purchase Agreement with the Lempster project is in effect? If so, please provide such projections.
5. Please provide any projections in PSNH's possession or control regarding the price of New Hampshire renewable energy certificates during the period when the arrangement with the Lempster project is in effect.
6. Please provide a detailed explanation concerning PSNH's reasons for entering into an arrangement with the Lempster project for purchasing capacity and energy in addition to purchasing renewable energy certificates, as opposed to purchasing only renewable energy certificates.
7. Given that the stated purpose of entering into the transaction with the Lempster project was to obtain renewable energy certificates, what benefits will PSNH receive from giving the Lempster project the right to repurchase a portion of those certificates that it could not have received without such a buy-back arrangement?
8. Isn't it likely that the Lempster project will exercise its right to buy-back renewable energy certificates from PSNH only if the market value of such certificates is higher than the price that Lempster is required to pay PSNH? If so, what protection does or will PSNH have from the potential for having to purchase replacement certificates at the then prevailing market price?
9. If the amounts that PSNH has contracted to pay the Lempster project for renewable energy certificates, energy and/or capacity are greater than the market value of such certificates, energy and/or capacity at the time they are needed to

meet PSNH's requirements, does PSNH intend to seek to recover the above-market portion of such costs from its customers? If not, please explain who will bear such cost. If so, please explain how such costs will be recovered through the current or any anticipated future rate structure (e.g., through the energy service charge or some other portion of the rate structure).

10. The power purchase agreement with the Lempster project appears to give PSNH the right to acquire renewable energy certificates only with regard to output from the project that is actually purchased by PSNH. If this understanding is correct, does that mean that if PSNH were to determine that it was not cost-effective or otherwise not desirable or possible to purchase or receive the output of the Lempster project, it would also not acquire renewable energy certificates from the project during such period? If this understanding is incorrect, please explain.
11. Mr. Wicker's testimony states (at page 7) that PSNH customers will benefit if the Lempster project buys back some renewable energy certificates. Isn't it possible that PSNH could incur a cost if Lempster exercises its buy-back option under certain circumstances? Please explain.
12. Ref. page 7, lines 11-18 of Wicker testimony. Please confirm that the 21,000 figure is for 2008 only. If this is not correct, please explain.
13. How many renewable energy certificates are projected to be generated by PSNH's Schiller plant for 2008 and thereafter? How does that number compare to the number of renewable energy certificates PSNH is required to procure under RSA 362-F?
14. How many renewable energy certificates are projected to be generated by any other generation resources owned by PSNH for 2008 and thereafter? For each such resource please list the number of certificates that PSNH expects to receive and the class of certificates pursuant to RSA 362-F.
15. For any purchased power resources other than the Lempster project that PSNH has under agreement, please indicate whether PSNH anticipates being entitled to any New Hampshire renewable energy certificates associated with such resource. For each such resource please list the number of certificates that PSNH expects to receive and the class of certificates pursuant to RSA 362-F.
16. Ref. Wicker testimony at page 9, lines 7-8 Please explain and provide supporting documentation for the statement that the contract price for the renewable energy certificates is less than current market prices. (Among other things, your response should specify the market prices for renewable energy certificates that is referred to.) Please specify the form and value of the consideration given by PSNH to be able to obtain the renewable energy certificates at less than market price.

17. Ref. Wicker testimony at page 10, lines 1-6. Please explain and provide supporting documentation for the statement that PSNH believes that the contract prices for capacity and energy are below market. (Among other things, your response should specify the market prices for capacity and energy that are referred to.) Please specify the form and value of the consideration given by PSNH to be able to obtain capacity and energy at less than market prices.
18. The Interconnection Agreement included in PSNH's filing with the PUC includes an October 13, 2005 letter that references an estimate of \$2.3 million for interconnection costs. The Interconnection Agreement filed with the PUC also an Attachment 2 to Exhibit C that has different amounts relating to the cost of interconnection. Please explain in detail and reconcile the difference between these amounts.
19. Section 2 of the Agreement for Joint Use of Pole Structures says that PSNH agrees to reconstruct and maintain the joint facilities at its expense, but that NHEC will own the facilities. Will Lempster be required to reimburse PSNH for any of these costs? If so, please provide a copy of any document and specific reference therein where the obligation set out or provide a specific reference to the portion of any document that has already been submitted.
20. Is PSNH paying any costs associated with interconnecting the Lempster facility to the transmission or distribution system (either PSNH's or that of any other entity) or the cost of any transmission or distribution system upgrades? If so, please specify.
21. Is PSNH providing any accommodations to the Lempster project in order to enable it to interconnect with PSNH's system? If so, please specify.
22. Is it PSNH's position that it is necessary for the company to enter into all of the agreements for which it is seeking approval in this proceeding. Please explain why or why not.
23. Please provide a copy of any document that contains any analysis, study or discussion concerning PSNH's decision to enter into a contract with the Lempster project, including but not limited to the decision to enter into a long term arrangement. Please specify how the specific term of the power purchase agreement was arrived at.
24. Did PSNH consider conducting a request for proposals to obtain the renewable energy certificates it ultimately decided to purchase from the Lempster project? If so, please explain the reason for PSNH's decision to conduct or not conduct such a process and provide any documents that reflect PSNH's consideration of such a process.

25. Please explain with specificity PSNH's basis, if any, for believing that the arrangement with the Lempster project is the best option for PSNH to procure the renewable energy certificates that are the subject of the arrangement. Your response should specify all other options and/or approaches that were considered and provide any supporting documentation.
26. Please indicate with specificity all information that was provided to the New Hampshire Site Evaluation Committee (SEC) regarding the potential for or the proposed or actual terms of any arrangement between PSNH and the Lempster project under which PSNH would purchase any energy or environmental product of the Lempster project. Please provide a copy of any documents that were submitted to the SEC or any constituent agency of the SEC that contains such information and provide an excerpt from any transcript of a hearing in which any such information was provided orally.
27. Please indicate with specificity all information that was provided to the New Hampshire Site Evaluation Committee (SEC) regarding the interconnection (or cost thereof) of the Lempster project to PSNH's transmission or distribution system. Please provide a copy of any documents that were submitted to the SEC or any constituent agency of the SEC that contain such information and provide an excerpt from any transcript of a hearing in which any such information was provided orally.
28. Was PSNH's proposal to purchase renewable energy certificates the only proposal received by the Lempster project? If not, please indicate how many other proposals Lempster received for the purchase of renewable energy certificates and the reason that the PSNH proposal was accepted instead of the others.
29. Please provide a detailed timeline setting forth the first contact with the Lempster project by PSNH concerning the potential purchase of renewable energy certificates, energy and/or capacity, the dates when any proposals were exchanged, the date when an agreement in principle was reached or letter of intent was executed, the date when draft agreements were exchanged and the date on which PSNH became obligated to purchase renewable energy certificates, energy and/or capacity from the Lempster project.

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Re: Public Service Company of New Hampshire

DE 08-077

**Data Requests Propounded by Constellation NewEnergy, Inc. and Constellation  
Energy Commodities Group, Inc. to PSNH—Set 2**

Please respond to the following data requests in accordance with the timeframe provided by the rules of the Public Utilities Commission. Copies of all responses and related documents that are provided electronically should be sent to:

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Camerino at the address noted above.

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workpapers, engineering diagrams (including "one-line" diagrams), mechanical and electrical recordings, telephone and telegraphic communications, speeches, and all other records, written, electrical, mechanical, or otherwise and drafts of any of the above.

2. "Lempster project" refers to Lempster Wind, LLC and any predecessor entity and includes the business conducted by Lempster Wind, LLC and any predecessor entity that conducted such business, as well as any affiliate or agent acting on behalf of or with regard to the interests of such business.
3. For each response, please identify the individual who will be responsible for cross-examination concerning each request.
4. If requested data is entirely duplicative of that furnished in response to another data request in this proceeding, it is only necessary to identify the response where the information is contained. **However, if the requested data was filed in another proceeding, please provide a copy with your response in this case.**
5. If any data request is unclear or imprecise, **please request clarification**, by telephone, from the above-identified individual, prior to furnishing unnecessary data or an inadequate response. Similarly, if you do not believe that a data request is relevant to this proceeding, **please inquire first by telephone** before refusing to answer the data request.
6. If you cannot answer a data request in full, after exercising due diligence to secure the information necessary to do so, state the answer to the extent possible, state why you cannot answer the data request in full, and state what information or knowledge you have concerning the unanswered portions.
7. These data requests are continuing in nature and require supplemental responses when further or different information with respect to the same is obtained.
8. Please reprint each request with your response to that request beginning on a separate page.
9. **If a data request requires you to perform a calculation or otherwise create work product that does not currently exist and it is PSNH's position that PSNH is not required to perform the calculation or create the work product, please provide all information in PSNH's possession or control that is necessary to perform the calculation or create the work product, rather than providing a non-responsive answer.**

### Data Requests

1. Ref. Page 4 of Mr. Wicker's testimony where he states "In determining the best way to interconnect the Project, PSNH and NHEC determined that jointly developing the interconnection and jointly sharing the output from the Project was beneficial to both." Please provide the specific rationale and any and all workpapers, projections, forecasts, analyses, studies, memos and other documents that justify, support or discuss the statement that the Project would be beneficial to both PSNH and NHEC.
2. To the extent not covered by the response to Data Request Constellation 2-1, please explain why PSNH entered into any and all arrangements with NHEC that are included in the overall transaction with the Lempster Project.
3. What does PSNH currently plan to do or anticipate doing with any renewable energy certificates that it acquires that are in excess of those needed to meet the New Hampshire renewable portfolio standard?
4. Other than the Lempster Resale Agreement referred to on page 3 of Mr. Wicker's testimony, are there any understandings or agreements with the Lempster Project or with NHEC relating to the Lempster Project that have either not been committed to writing or have not been filed with the PUC in this proceeding? If so, please summarize their substantive terms and provide a copy of any documents reflecting such understandings or agreements.
5. Ref. page 3, lines 15-18 of testimony of Mr. Wicker. Please explain what it means that the dedicated circuit will be "built on top of a rebuilt distribution circuit". In particular, your answer should include, but not necessarily be limited to, the following:

What is the current status of the rebuilding of the distribution circuit?

What is the anticipated cost of the rebuild (provide total cost and PSNH's portion)?

What is the reason that the circuit is being rebuilt and would it have been rebuilt in the absence of the Lempster Project and, if so, when?

In the absence of the Lempster project, would the circuit have been rebuilt in precisely the same manner and, if not, specify any differences and the net cost impact of those differences?

Is it PSNH's position that the cost of the rebuild should be included in rate base for purposes of calculating its revenue requirement (if only a portion will be included, please specify)?

What specifically does Mr. Wicker mean when he says the circuit will be rebuilt?

6. Is the Lempster Project required to reimburse PSNH for any portion of the costs related to the rebuild of the distribution circuit discussed on page 3 of Mr. Wicker's testimony?
7. To the extent not previously provided in response to any other data request by Constellation, please provide a table showing the number of renewable energy certificates, by class and year, that PSNH projects it will need to acquire during the period 2008-2023. If PSNH does not have a projection for the entire period, provide the best information available at this point.
8. To the extent not previously provided in response to any other data request by Constellation, please provide a table showing the number of renewable energy certificates, by class and year, that PSNH currently has the right to obtain (whether from its own assets or those under contract) during the period 2008-2023. Your response should specify the source of each certificate and the number from each such source for each such year and class and should include the certificates attributable to the Lempster Project.
9. Is it a correct reading of Mr. Wicker's testimony at page 8, lines 1-13 that, if PSNH were to use all of the renewable energy certificates from its own generation assets and the Lempster Project for purposes of satisfying its obligations under the New Hampshire renewable portfolio standard, it does not anticipate needing to generate or obtain additional certificates to satisfy its obligations prior to 2013? If not, please explain. If so, please describe any circumstances or strategies that would nevertheless cause PSNH to seek to generate or obtain additional certificates.
10. The Power Purchase Agreement with the Lempster Project requires Lempster to give PSNH an opportunity to make a proposal to acquire the project under certain circumstances. Please explain whether PSNH believes that it has the legal authority to acquire the Lempster Project and, if so, the basis for that belief. If PSNH believes that a change in law or policy would be required before it could acquire ownership of the Lempster Project, please identify the current law(s) or policy(ies) that would need to be modified. With regard to any PUC orders relied on, please provide the order number and relevant pages of the orders relied upon or referred to.
11. Please explain the reason that the Lempster Project requested the right to repurchase renewable energy certificates, the specific reason that PSNH agreed to such a proposal or found it beneficial or desirable (i.e., it is not necessary to state that PSNH believed it was necessary to reach agreement). If a complete explanation is provided in response to another data request, it is

sufficient to refer to that response.

12. Please indicate whether any party offered the same or better financial terms to the Lempster Project than PSNH did for the sale of renewable energy certificates by Lempster, other than with regard to the terms of any interconnection or transmission or distribution upgrades. If so, please provide the name of any such party.
13. Please explain the value that each of the parties to the transaction placed on PSNH's ability to provide any transmission or distribution system upgrades necessary for the Lempster Project to deliver power. If no specific value was assigned to the upgrades, please explain the extent to which the ability to provide the upgrades was taken into consideration in deciding whether and on what terms to enter into the transaction. Your response should include a copy of any documents, including emails, memos, studies, analyses, notes and any other written or electronic materials that refer to such value or consideration.



McLane, Graf,  
Raulerson &  
Middleton

*Professional Association*

11 SOUTH MAIN STREET, SUITE 500 • CONCORD, NH 03301  
TELEPHONE (603) 226-0400 • FACSIMILE (603) 230-4448

STEVEN V. CAMERINO  
Internet: steven.camerino@mcclane.com

OFFICES IN:  
MANCHESTER  
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July 31, 2008

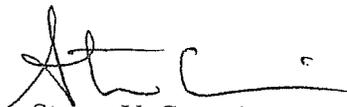
Gerald M. Eaton  
Public Service Co. of NH  
780 N. Commercial St.  
PO Box 330  
Manchester, NH 03105-0330

Re: DE 08-077, Public Service Company of New Hampshire

Dear Attorney Eaton:

I have enclosed the third set of Data Requests Propounded by Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. to be answered by PSNH.

Sincerely,



Steven V. Camerino

SVC:gvb  
Enclosure

cc: Service List

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STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Re: Public Service Company of New Hampshire

DE 08-077

**Data Requests Propounded by Constellation NewEnergy, Inc. and Constellation  
Energy Commodities Group, Inc. to PSNH—Set 3**

Please respond to the following data requests in accordance with the timeframe provided by the rules of the Public Utilities Commission. Copies of all responses and related documents that are provided electronically should be sent to:

Steven V. Camerino  
McLane, Graf, Raulerson & Middleton,  
Professional Association  
11 South Main Street, Suite 500  
Concord, NH 03301  
steven.camerino@mclane.com

Michael E. Kaufmann  
Senior Counsel  
Constellation Energy Resources, LLC  
111 Market Place, Suite 500  
Baltimore, MD 21202  
Michael.Kaufmann@Constellation.com

Daniel Allegretti  
VP and Director Wholesale Energy Policy  
Constellation Energy Resources, LLC  
111 Market Place, Suite 500  
Baltimore, MD 21202  
Daniel.Allegretti@Constellation.com

Thomas E. Bessette  
VP Regulatory and Government Affairs  
Constellation Energy Resources, LLC  
800 Boylston Street, 28<sup>th</sup> Floor  
Boston, MA 02199  
Tom.Bessette@Constellation.com

Any bulk materials that are provided in hard copy only should be provided to Mr.

Camerino at the address noted above.

**Definitions, Form, and Content of Data Responses**

1. "Document" or "documents" refers to all writings and records complete or partial of every type in your possession, control, or custody, including but not limited to: testimony and exhibits, memoranda, correspondence, letters, reports (including drafts, preliminary, intermediate, and final reports), surveys, analyses, studies (including economic and market studies), summaries, comparisons, tabulations, charts, books, pamphlets, photographs, maps, bulletins, corporate or other minutes, notes, diaries, log sheets, ledgers, transcripts, microfilm, microfiche, computer data, computer files, computer diskettes, computer tapes, computer inputs, computer outputs and printouts, vouchers, accounting statements, budgets,

workpapers, engineering diagrams (including "one-line" diagrams), mechanical and electrical recordings, telephone and telegraphic communications, speeches, and all other records, written, electrical, mechanical, or otherwise and drafts of any of the above.

2. "Lempster project" refers to Lempster Wind, LLC and any predecessor entity and includes the business conducted by Lempster Wind, LLC and any predecessor entity that conducted such business, as well as any affiliate or agent acting on behalf of or with regard to the interests of such business.
3. For each response, please identify the individual who will be responsible for cross-examination concerning each request.
4. If requested data is entirely duplicative of that furnished in response to another data request in this proceeding, it is only necessary to identify the response where the information is contained. **However, if the requested data was filed in another proceeding, please provide a copy with your response in this case.**
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### Data Requests

1. Ref. Data Request Constellation 1-2. Please confirm that there are no other documents that are responsive to this request, other than those referred to in the response. If there are other responsive documents, please provide them.
2. Ref. Data Request Constellation 1-8 and 1-7. Is it PSNH's position that the premium referred to in PSNH's response to Constellation 1-7 is the only protection that PSNH has from the potential to be required to purchase replacement certificates at the then-prevailing price if the Lempster project exercises its buy-back right? If not, please provide a detailed explanation.
3. Ref. Data Request Constellation 1-11. The response does not answer the question posed. Please state specifically whether there are circumstances under which PSNH could incur a cost if the Lempster project exercises its buy-back option. If not, why not. If PSNH agrees that there are circumstances under which this could occur, please indicate the circumstances under which PSNH believes such an event could occur and what steps PSNH either has taken or intends to take to eliminate or mitigate against such potential.
4. Ref. Data Request Constellation 1-14. Please specifically identify each PSNH generating unit referred to in the response and for each provide the number and class of renewable energy certificates that PSNH is seeking.
5. Ref. Data Request Constellation 1-16. Please provide a complete detailed written response. If it is necessary to redact specific portions of the response in order to comply in good faith with the Commission's order in this case regarding PSNH's motion for protective order, please provide Constellation and Freedom Energy Partners with an appropriately redacted version of the response and provide Staff and OCA with an unredacted version of the response.
6. Ref. Data Request Constellation 1-17. Please provide a complete detailed written response. If it is necessary to redact specific portions of the response in order to comply in good faith with the Commission's order in this case regarding PSNH's motion for protective order, please provide Constellation and Freedom Energy Partners with an appropriately redacted version of the response and provide Staff and OCA with an unredacted version of the response.
7. Ref. Data Request Constellation 1-23. Please provide all documents that are responsive to this request. If it is necessary to redact specific portions of the documents in order to comply in good faith with the Commission's order in this case regarding PSNH's motion for protective order, please provide Constellation and Freedom Energy Partners with an appropriately redacted version of the documents and provide Staff and OCA with an unredacted version. Also, please respond to the last sentence of the request.

8. Ref. Data Request Constellation 1-25. Please explain the basis for PSNH's statement that it is not required to show that the arrangement is the best option for procuring the renewable energy certificates that are the subject of the agreement. In particular, your response should include but not be limited to an explanation as to whether and on what basis the Commission should find that the agreements presented in this proceeding are in the public interest if PSNH could have obtained equivalent renewable energy certificates on more favorable terms.
9. Ref. Data Request Constellation 2-1. Please confirm that PSNH does not have any workpapers, projections, forecasts, analyses, studies, memos or other documents that justify, support or discuss why the Lempster project would be beneficial to PSNH and NHEC. If there are any such documents, whether internal to PSNH or included in communications to NHEC or others, please provide them.
10. To the extent different from any material that would be responsive to Constellation 3-9, please provide all workpapers, projections, forecasts, analyses, studies, memos or other documents (whether internal to PSNH or included in communications to NHEC or others) that justify, support or discuss why the Lempster project would be beneficial to PSNH.
11. Ref. Data Request Constellation 2-11. Did any representative (including legal counsel) of the Lempster project ever communicate, either orally or in writing, to any representative of PSNH (including legal counsel) information regarding Lempster's reason(s) for requesting the right to repurchase renewable energy certificates? If yes, please provide copies of all such communications or other documents reflecting the information in such communications, including notes, memos, emails and other materials, whether maintained in hard copy or electronic format.
12. Ref. Data Request Constellation 2-13. Please confirm that PSNH has no documents that are responsive to this request. If there are responsive documents, please provide them.
13. Did PSNH ever perform or have performed on its behalf an analysis of the value or cost of the renewable energy certificate buy-back option given to the Lempster project, whether using the Black-Scholes model or any other analytical or other model? If so, please provide a copy of all such analyses. If it is necessary to redact specific portions of the response in order to comply in good faith with the Commission's order in this case regarding PSNH's motion for protective order, please provide Constellation and Freedom Energy Partners with an appropriately redacted version of the response and provide Staff and OCA with an unredacted version of the response.
14. Did PSNH ever perform or have performed on its behalf an analysis of the value or cost to PSNH of any or all of the individual components (i.e., either individually or a combined basis) of the arrangement with the Lempster project

and/or NHEC that are the subject of this proceeding? If so, please provide a copy of all such analyses. If it is necessary to redact specific portions of the response in order to comply in good faith with the Commission's order in this case regarding PSNH's motion for protective order, please provide Constellation and Freedom Energy Partners with an appropriately redacted version of the response and provide Staff and OCA with an unredacted version of the response.

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached pleading to be served pursuant to N.H. Code Admin. Rule Puc §203.11.

August 15, 2008

Date

A handwritten signature in black ink, appearing to read "Robert A. Bersak", written over a horizontal line.

Robert A. Bersak