

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Least Cost Integrated Resource Plan

Docket No. DE 10-261

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S MOTION FOR
PROTECTIVE ORDER RE: GENERATION AND EMISSION PLANNING
DOCUMENTS

Pursuant to RSA 91-A:5,(IV)(Supp.) and N.H. Code Admin. Rules Puc § 203.08, Public Service Company of New Hampshire ("PSNH") hereby requests protective treatment for two attachments to two data requests propounded by the Office of Consumer Advocate in the above-captioned matter. PSNH contends that the information is confidential financial information and should be protected from public disclosure. In support of its Motion for Protective Order, PSNH says the following:

1. The data requests OCA Set No. 1, Q-OCA-039 and Q-OCA-049 are as follows:

Question:

Referring to Section V-B.5 Fuel Procurement Strategies there is a reference to an annual fuel and emission planning meeting. Please provide the agenda, minutes and any handouts of the most recent meeting.

Question:

Section IX, starting on page 133 addresses PSNH's compliance with clean air and emissions regulations at the Federal and State levels. On page 137 the statement is made: "A subgroup of PSNH's Generation management team meets at least annually to comprehensively analyze PSNH's position and to set strategic direction for PSNH Generation." Please provide the agenda, minutes and all handouts or documents discussed of the most recent meeting.

2. The attachment to Q-OCA-039 contains details of the contract tonnage of coal that PSNH plans to use and the tons of coal PSNH needs to procure in the period 2011 to 2013. To the extent these have not been

contracted, then public disclosure would put PSNH at a competitive disadvantage with respect to its coal suppliers. The rest of the attachments show PSNH's business strategies for fuel use in 2011 including the tons of coal expected to be burned, prices, mmbtu costs, and projected dispatch assumptions. There is a notation of "Possible Sale" of coal contracted for sale to PSNH but may be available for sale to a third party before it is delivered.

3. The attachments to Q-OCA-049 represent assumptions made by PSNH staff attending the annual fuel and emissions meetings concerning possible emission levels for the year 2011. There are confidential bid account numbers for PSNH plants in the Regional Greenhouse Gas Initiative (RGGI) as well as levels of banked emissions credits and prices of allowances.

4. The attachments to both responses contain sensitive, confidential financial and commercial information necessary for PSNH personnel to develop internal strategies for generation and emission planning. The disclosure of this information would be harmful to PSNH and its customers. Generation management personnel need information with which to make strategic business decisions without the threat that this information will be disseminated to active litigants in other forums. Disclosure would also either alert suppliers of PSNH's needs or disclose confidential pricing terms of fuel supply contracts already negotiated.

5. Under the Commission's interim Chapter 200 Rules, RGGI bids and supplier commodity pricing and special terms of supply arrangements are to be granted protective treatment routinely. Puc 201.06 (a)(24) and 25).

6. New Hampshire Sierra Club (NHSC) and Conservation Law Foundation (CLF) have each served notice of intent to bring suit against PSNH. *See*, PSNH Objection to NHSC Motion to Compel, Attachment D

(March 21, 2011) and Attachments A and B to this Motion.¹ NHSC and CLF have sought the same information from PSNH in other proceedings before New Hampshire Department of Environmental Services, Air Resources Division (ARD) and the U.S. Environmental Protection Agency (EPA). In each instance, those agencies have ruled against disclosure to NHSC and CLF.

7. TransCanada Power Marketing Limited and TransCanada Hydro Northeast, Inc. ("TransCanada"), Granite Ridge Energy L.L.C. ("Granite Ridge"), New England Powder Generators Association ("NEPGA") and Freedom Energy Logistics, LLC /Halifax America Energy Company, LLC ("FEL/HAEC") are participants in the power supply market at a wholesale and retail level. Disclosure of fuel prices and projected dispatch information contained in the attachments to Q-OCA-039 would give the power supplier intervenors in this proceeding a competitive advantage over PSNH. The emission allowance bidding strategies and specific RGGI information contained in the attachments to Q-OCA-049 should not be disclosed to the competitive energy supplier intervenors. Any party can participate in the RGGI auctions and to the extent that the confidentiality of that information is compromised, the auctions could become less competitive resulting in higher RGGI bids. By disclosing to the competitive suppliers information regarding both PSNH's allowances held and the Company's total allowance obligation, PSNH would be put at a competitive disadvantage with respect to acquisition of allowances from these third parties.

8. It has been the Commission's practice in the past to grant protective treatment to confidential commercial information such as power supply and

¹ CLF filed notice of intent to file suit in 2005 for the failure of PSNH to address mercury emissions from Merrimack Station (Attachment A), and in 2009 CLF filed notice of intent to file suit for PSNH having gone forward to addressing mercury emissions from Merrimack Station (Attachment B).

coal supply contracts and to restrict dissemination of that information to intervenors who are competitive suppliers. In *Re Kearsarge Telephone Company*, Docket No. DT 07-027, a competitive local access telecommunications provider, SegTel, Inc., sought access to competitive information from the petitioning incumbent local telecommunications carriers. Order No. 24,820, 92 NH PUC 441, 443 (2007). In that decision the Commission stated, "It is well-established in the context of administrative proceedings that due process is a flexible concept, varying with the nature of the governmental and private interests that are implicated. *Matthews v. Eldridge*, 424 U.S. 319, 334 (1976)." *Id.* It is reasonable and permissible to restrict access to this information from the environmental litigant intervenors and competitive supplier intervenors in this proceeding in this proceeding. *See*, RSA 541-A:32, III.

WHEREFORE PSNH respectfully requests the Commission issue an order preventing the public disclosure of response to the above-listed Data Request, to prevent dissemination of the confidential materials to New Hampshire Sierra Club, Conservation Law Foundation, TransCanada, Granite Ridge NEPGA and FEL/HAEC, and to order such further relief as may be just and equitable.

Respectfully submitted,
Public Service Company of New Hampshire

April 8 2011
Date

By: Gerald M. Eaton
Gerald M. Eaton
Senior Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
(603) 634-2961

CERTIFICATE OF SERVICE

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

April 8 2011
Date

Gerald M. Eaton
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