

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

Docket No. DE 10-261

PUBLIC SERVICE OF NEW HAMPSHIRE

2010 Least Cost Integrated Resource Plan

**CONSERVATION LAW FOUNDATION'S OBJECTION
TO MOTION FOR PROTECTIVE ORDER**

The Conservation Law Foundation (CLF) hereby objects to the Motion for Protective Order Re: Generation and Emissions Planning Documents (Motion) filed with the Commission on April 8, 2011 by Public Service Company of New Hampshire (PSNH). In support of this objection, CLF states the following:

1. In its Motion, PSNH argues that certain records it provided to the Office of Consumer Advocate contain its “strategies for fuel use” “projected dispatch assumptions” and “possible emissions levels” for 2011 and constitute “confidential financial and commercial information necessary for PSNH personnel to develop internal strategies for generation and emissions planning.” Motion at Pars. 2 - 4. PSNH seeks a protective order that would restrict access to said records by CLF, the New Hampshire Sierra Club, and various other distinct parties which it claims participate in the wholesale or retail electricity markets.¹

2. CLF objects to PSNH’s request which fails to set forth any basis for denying CLF access to the records pursuant to RSA 91-A:5 or other applicable law. See, N.H. Admin. Code Rules PUC 203.08(b). With respect to CLF, PSNH seeks to deny access merely because of “the

¹ With respect to the wholesale or retail market participants, the Motion claims that the information “would give the power supplier intervenors in this proceeding a competitive advantage over PSNH.” Motion at Par. 7. CLF is neither a power supplier nor wholesale market participant. Thus, such grounds for confidentiality are not applicable, relevant or legally valid with respect to CLF. CLF takes no position as to the merits of such claims as they may apply to other parties in this proceeding.

threat that this information will be disseminated to active litigants in other forums.” Motion at Par. 4. If the Commission were to grant the protective order requested by PSNH, then the parties, their potential witnesses and their counsel would never have the opportunity to review and analyze relevant information (i.e., regarding the adequacy of PSNH’s planning process) due to a completely speculative and extraneous concern about possible future litigation. This would constitute a denial of due process for which PSNH has not provided any legal argument or justification for limiting CLF’s access.

3. Contrary to the express requirements of N.H. Admin. Code Rules PUC 203.08(b), PSNH’s motion fails to provide “a specific reference to the statutory or common law support for confidentiality” as pertaining to CLF or “a detailed statement of the harm that would result from disclosure” to CLF. In particular, the Motion completely lacks any discussion of how disclosure to a party representing its ratepayer members and which is not a power supplier or wholesale market participant would result in harm that outweighs the public’s interest in being informed.

4. PSNH’s arguments focus on the alleged harm which would result from disclosure to “competitive suppliers” and then seek to bootstrap those competitive concerns to CLF as a so-called “environmental litigant intervenor” The use of this term is intentionally misleading and is irrelevant. In the first instance, legal proceedings in other forums addressing separate and distinct environmental authorities are of no consequence to determinations regarding what is relevant or entitled to confidential treatment in the instant proceeding, which must stand based on the statutes and prior Commission orders. The Commission has previously determined that “an assessment of the plan’s environmental impact” is a relevant consideration in this

proceeding. Order No. 25,132, p. 6 (July 20, 2010).² PSNH's claim that disclosure risks "the threat that the information will be disseminated to active litigants in other forums" is not only legally defective, but is patently and knowingly misleading with regard to CLF. The Motion fails to provide information regarding any litigation initiated by CLF as a justification for relief. Indeed, CLF was recently denied intervention by vote of the Air Resources Council in an appeal initiated by PSNH challenging an order of the New Hampshire Department of Environmental Services regarding RGGI allowances (Air Resources Council #09-43, Appeal of PSNH). PSNH's improper and irrelevant attempts to impute the legal actions of others, including itself and the New Hampshire Sierra Club, to CLF must be rejected by the Commission.³

5. In its Motion, PSNH concedes that the information it seeks to withhold "is necessary for PSNH personnel to develop internal strategies for generation and emission planning." Motion at Par. 4. In effect, PSNH concedes that the information will inform "whether PSNH's planning process is adequate as defined by the requirements set forth in RSA 378:38 and 39 and Order 24,945 and whether it is consistent with RSA Chap. 374-F and RSA 369-B:3a." See, Order of Notice at page 2. The disclosure of this information is central to the public's understanding of how the Commission evaluates the adequacy of PSNH's planning process and renders its final decision.

6. The Commission has not looked favorably on requests to deny parties access to relevant information, finding that "whatever information we might reasonably rely upon in making a decision should be accessible to all Parties. . . ." *North Atlantic Energy Corporation*,

² The Commission has previously determined that its proceedings are distinct from and unconnected to those before the New Hampshire Department of Environmental Services. See, Order No. 25,131 (7/10/10) (denying the Petition to Intervene of the New Hampshire Sierra Club).

³ Likewise, the Motion would have the Commission believe that CLF's notice letter sent more than two years ago and which alleges violations of the Clean Air Act amounts to litigation (see Motion Attachment A), another false and intentionally misleading assertion. Although completely irrelevant to the instant motion, CLF expressly reserves its right under any and all environmental statutes to act against entities violating environmental requirements whether or not they may be regulated by the Commission.

87 NH PUC 396, 399 (2002), cited in *City of Nashua, Petition for Valuation Pursuant to RSA 38:9*, Order No. 24,495 (July 29, 2005). The Commission's reluctance to deny parties access to information that the Commission may rely upon reflects important due process considerations in litigation which are amplified where, as in here, PSNH's justification for denying CLF access is highly speculative and remote. Moreover, the Commission's rules provide a procedure for providing the materials to CLF and protecting them from distribution to other parties or the general public should the Commission so determine. N.H. Code Admin. Rules PUC 203.08(j) authorizes the Commission to "include in its protective order a directive that all parties receiving the material shall also treat it as confidential."

WHEREFORE, CLF respectfully requests that the Commission:

- A. Deny PSNH's request for protective treatment of the response to the Office of Consumer Advocate, OCA Set No. 1, Q-OCA-39 and attachments, and Q-OCA-49 and attachments; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,

CONSERVATION LAW FOUNDATION

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of April 2011, a copy of the foregoing Objection was sent electronically or by First Class Mail to the service list.



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