

<b>ORIGINAL</b>	
N.H.P.U.C. Case No.	DE 10-261
Exhibit No.	PSNH-13
Witness	New Hampshire Panel 6
DO NOT REMOVE FROM FILE	

Public Service Company of New Hampshire  
Docket No. DE 10-261

Data Request STAFF-04

Dated: 12/13/2011

STAFF-003-SP01

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**Witness:** Richard L. Levitan  
**Request from:** New Hampshire Public Utilities Commission Staff

**Question:**

Ref. LAI Rebuttal, page 12. Please provide all support for the claim that "Jacobs' legal department wanted to retain working copies of the models and source documentation in perpetuity, along with any other confidential information provided to Jacobs ..."

**Response:**

Original Response:

The last version of the draft confidentiality agreement that PSNH counsel retained was made in the afternoon of June 13, 2011 and communicated to Mr. Camacho of Jacobs that afternoon. PSNH understood there was a disagreement on the length of time Jacobs could retain the confidential information. LAI offered seven years per the attached draft confidentiality agreement and Jacobs insisted on archiving indefinitely Jacobs' work product containing LAI's confidential information. There was an impasse as of that date.

Revised Response:

Early on June 2, 2011, Mr. Speidel, Staff Attorney, communicated to Mr. Eaton of PSNH by email that the NDA terms negotiated between them were acceptable to Staff and that he would have Jacobs sign the NDA by close of business that day. As defined in that version of the NDA, "Confidential Information" included in part "models, inventions, formulas, processes, computer software, software codes, information systems, software authorizing techniques". Mr. Eaton then sent the finalized NDA to Msrs. Speidel, Arnold, and McCluskey. In the afternoon, Mr. Eaton received a reply from Ms. Jan Allen of Jacobs with a revised NDA that added a term to allow Jacobs to retain one copy of Confidential Information for legal purposes.

Mr. Levitan rejected the addition of that clause and first countered that day in a revised NDA with a substitute term to allow Jacobs access to the Confidential Information if its need for litigation arose. Mr. Eaton sent Ms. Allen of Jacobs an NDA version with that language on June 2, which was not accepted. Then Mr. Levitan proposed allowing retention of Confidential Information for up to seven years in an NDA version sent by Mr. Eaton to Mr. Camacho, Ms. Allen, and Mr. Arnold of Jacobs on June 13 (attachment 1). After that version was not accepted by Jacobs, Mr. Seth Parker of LAI communicated with Mr. Frank DiPalma of Jacobs by phone. Mr. Parker recalls that Mr. DiPalma said it was reasonable to not distribute proprietary software code or documentation, and that Jacobs' analyst only needed to test drive the models. Based on this discussion, a final version of the NDA prepared by LAI and PSNH was sent by Mr. Eaton to Mr. Camacho, Ms. Allen, and Mr. Arnold on June 21, 2011 in which software models and software codes are not considered to be covered as types of Confidential Information that would be provided, and Jacobs would be able to keep one archival copy of Confidential Information for an indefinite time. By the time the Staff testimony was filed on July 27, 2011, LAI had not heard of a reply from Jacobs to that proposed NDA.