

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

Docket DE 11-184

**Joint Petition
for
Approval of Power Purchase and Sale Agreements
and
Settlement Agreement**

**Motion for Confidential Treatment Pursuant to RSA Chapter 91-A
and N.H. Code Admin. Rules Puc §203.08**

Pursuant to RSA 91-A:5, IV and N.H. Code Admin. Rules Puc §203.08, Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, DG Whitefield, LLC d/b/a Whitefield Power & Light Company, and Indeck-Alexandria, L.L.C. (collectively the “Wood IPPs”), hereby request confidential treatment and the issuance of a protective order for certain confidential, commercial, and financial information contained in power purchase and sale agreements (collectively, the “PPAs”) between five of the Wood IPPs and Public Service Company of New Hampshire (“PSNH”), and portions of Exhibit B to the Settlement Release and Support Agreement between the Wood IPPs, PSNH, Berlin Station, LLC, Laidlaw Berlin Biopower, LLC and Cate Street Capital, Inc. (“Exhibit B”) that are the subject of the Joint Petition for Approval of Power Purchase and Sale Agreements and Settlement Agreement filed with the Commission on August 23, 2011 (the “Joint Petition”) by PSNH, the Wood IPPs, the New Hampshire Department of Resources and Economic Development and certain Staff of the New Hampshire Public Utilities Commission.

In support of this Motion for Confidential Treatment, the Wood IPPs say the following:

1. The PPAs have been filed with the Commission for approval as described in more detail in the Joint Petition.

2. N.H. Code Admin. Rules Puc §203.08(a) provides that the Commission shall, upon motion, issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law.

3. Rule Puc §203.08(b) requires a motion for confidential treatment to include: (i) the documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought, (ii) specific reference to the statutory or common law support for confidentiality, and (iii) a detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.

4. The information sought to be protected is identified in the PPAs filed herewith in the form prescribed by Rule Puc §201.04. The information for which confidential treatment and protection is sought includes energy pricing, each Wood IPPs delivery period duration, each Wood IPP's initial wood price for purposes of adjusting the energy price, and the details of each PPA's fuel price adjustment mechanism, generally referred to herein as "pricing." The confidential information contained in the PPAs also includes such items as federal identification and bank routing numbers. The confidential information contained in Exhibit B consists of confidential information that is not subject to approval by the Commission.

5. The confidential information for which protection is sought is exempt from public disclosure under RSA 91-A:5, IV. RSA 91-A:5, IV exempts records pertaining to confidential, commercial, or financial information from disclosure under RSA 91-A:5, the "Right-to-Know Law." RSA 91-A:5, IV; *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 553 (1997).¹

¹ In *Union Leader Corp.* the court stated that:

The terms "commercial or financial" encompass information such as business sales statistics, research data, technical designs, overhead and operating costs, and information on financial condition. *Landfair v. United States Dept. of Army*, 645 F. Supp. 325, 327 (D.D.C. 1986); see *Comstock Intern. v. Export-Import Bank of U.S.*, 464 F. Supp. 804, 806 (D.D.C. 1979) (loan agreements are financial or commercial information). Whether documents are commercial depends on the character of the

6. In determining whether information should be protected from public disclosure under RSA 91-A:5, IV and Rule Puc §203.08, the Commission uses the three-step analysis developed in *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005) and *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008). See, e.g., *Public Service Company of New Hampshire*, Order No. 25,158 (Oct. 15, 2010); *Unitil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (Sept. 22, 2009); and *Public Service Co. of New Hampshire*, Order No. 25,037 (Oct. 30, 2009).

7. This analysis requires (i) an evaluation of whether there is a privacy interest at stake that would be invaded by disclosure (ii) when a privacy interest is at stake, the public's interest in disclosure is assessed, and (iii) when there is a public interest in disclosure, that interest is balanced against any privacy interests in nondisclosure. See *Id.*; see also *Unitil Energy Systems, Inc.*, Order No. 25,054 (December 18, 2009); *Public Service Company of New Hampshire*, Order No. 25,059 (December 31, 2009).

8. The Wood IPPs and PSNH have a privacy interest in the various PPAs' pricing terms. The Commission has previously found that similar pricing information meets the definition of confidential, commercial, financial information and that a privacy interest attaches to such information. See, e.g., *Public Service Company of New Hampshire*, Order No. 24,839 at 9-10 (Apr. 4, 2008) (disclosure of pricing information could put PSNH, its ratepayers, and generators at a competitive disadvantage); *Public Service Company of New Hampshire*, Order No. 25,158 at 12 (Oct. 15, 2010) ("we agree that [pricing] is confidential, commercial, or financial information in which the companies have a privacy stake."); *Public Service Company of New Hampshire*, Order No. 24,965 at 2 (May 1, 2009).

9. The public's interest in the pricing information in the PPAs is limited. Each PPA is for a relatively small amount of unit contingent energy and is only for a

information sought. Information is commercial if it relates to commerce. See *American Airlines, Inc. v. Nat. Mediation Bd.*, 588 F.2d 863, 870 (2d Cir.1978).

Union Leader Corp., 142 N.H. at 553.

relatively short duration. Additionally, the PPAs are only for energy, not for renewable energy certificates.

10. The Wood IPPs' and PSNH's privacy interests in non-disclosure and the harm that they would suffer outweigh any public interest in disclosure of the pricing information. PSNH entered into the PPAs with the five Wood IPPs in part to support the continued operation of the Wood IPPs' generating facilities and their related benefits to the New Hampshire economy, and, in part to respond to requests to resolve Supreme Court Case No. 2011-0348. The pricing terms of the PPAs, in particular, were the result of protracted and detailed negotiations. These negotiations were confidential.

11. To assure continued confidentiality, each PPA provides that its terms are confidential and contains a confidentiality provision on page 5, reading as follows:

The Parties agree to keep confidential the terms and provisions set forth in this Confirmation and all transactions hereunder, except as may be required by Law or necessary to obtain regulatory approval from the NH PUC.

In the event it becomes necessary for Buyer to submit any of Seller's commercially sensitive information, including, but not limited to, the Seller's or the Facility's operational and financial data, to any person or entity, including (without limitation) the NH PUC, Buyer shall: (i) provide prompt notice to Seller of its intent to submit such information, (ii) identify the person or entity to whom the information is to be submitted, (iii) make any such submission as confidential or under a request for confidential treatment or protective order, and (iv) provide a copy of the submission to Seller.

The filing of this Motion for Confidential Treatment is intended to comply with this contractual term of the PPAs.

12. Disclosure of the pricing terms of the PPAs, given their short duration, would detrimentally impact both the Wood IPPs' competitive position in the power sales marketplace vis-à-vis other competitive sellers of electricity and vis-à-vis each other as competitors in the sale of electricity and the purchase of wood fuel. It would also detrimentally impact PSNH's ability to attract negotiating partners and to obtain best pricing from individual generators for PSNH ratepayers in the future. As a general matter, PSNH's ability to obtain the most economic price from any one competitive seller

is improved if that seller's pricing remains confidential and does not become available, either directly or indirectly, to that seller's competitors. The pricing information contained in the PPAs was negotiated with the reasonable belief that the information would not be disclosed to the public or to competitors by the Commission.

13. On balance, the Wood IPPs' and PSNH's privacy interests outweigh any public interest in the pricing terms of the PPAs and the confidential terms of Exhibit B which are not subject to Commission approval. Disclosure of pricing information here would affect the Wood IPP's ability to negotiate wood supply contracts and would affect both the Wood IPPs' and PSNH's ability to negotiate power contracts in future. By comparison, the public's interest in disclosure is slight in this instance. The PPAs in this docket are of a limited duration, each of the PPAs is for a relatively small amount of unit contingent energy, and the rate treatment sought would not raise PSNH's default service rates. The parties may well enter into negotiations for future energy sales within the foreseeable period following the Commission's approval of the PPAs. The limited duration of the contracts, therefore, minimizes the effect of the contracts on the public and therefore lessens the public's interest in pricing information. At the same time, the short duration of the contracts places the parties, both PSNH ratepayers and the Wood IPPs, at greater competitive disadvantage in the negotiation of future energy contracts. As the Commission has reasoned in past cases, "[i]f public disclosure of confidential, commercial or financial information would harm the competitive position of the person from whom the information was obtained, the balance would tend to tip in favor of nondisclosure." *Re: National Grid plc*, 92 NHPUC 279, 326 (2007).

WHEREFORE, the Wood IPPs respectfully request that the Commission grant confidential treatment of the confidential, commercial, or financial information contained

in the PPAs and Exhibit B by issuance of a protective order as requested herein. In accordance with N.H. Code of Administrative Rules Puc 203.08(g), the unredacted PPAs and Exhibit B should be labeled "Confidential," held in a secure location within the Commission's offices, and not disclosed to the public or any party other than the Commission staff without the consent of the Wood IPPs.

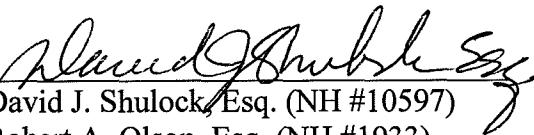
Respectfully submitted,

BRIDGEWATER POWER COMPANY, L.P.,
PINETREE POWER, INC.,
PINETREE POWER-TAMWORTH, INC.,
SPRINGFIELD POWER LLC,
DG WHITEFIELD, LLC d/b/a WHITEFIELD
POWER & LIGHT COMPANY, and
INDECK ENERGY-ALEXANDRIA, LLC

By Their Attorneys,

OLSON & GOULD, P.C.

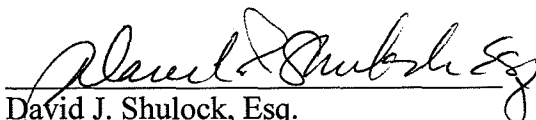
August 23, 2011

By: 
David J. Shulock, Esq. (NH #10597)
Robert A. Olson, Esq. (NH #1933)
David K. Wiesner, Esq. (NH #6919)
5 Chenell Drive, Box 6
Concord, NH 03301
(603) 225-9716
dshulock@bowlaw.com
rolson@bowlaw.com
dwiesner@bowlaw.com

CERTIFICATE OF SERVICE

I hereby certify that, on this date, I served an electronic copy of this filing with the office of the consumer advocate pursuant to Rule Puc 203.02(a)(4).

Date: August 23, 2011


David J. Shulock, Esq.