

THE STATE OF NEW HAMPSHIRE  
before the  
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire  
Default Energy Service Rate

Docket No. DE 09-180

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S  
MOTION FOR PROTECTIVE ORDER RE: MAJOR MAINTENANCE SCHEDULE

Pursuant to RSA 91-A:5,(IV) and N.H. Code Admin. Rules Puc § 203.08, Public Service Company of New Hampshire ("PSNH" or the "Company") hereby requests protective treatment for the response to a data request propounded by the Staff. The response contains the dates and duration of planned maintenance outages at PSNH's major generating stations during 2010 the upcoming Default Energy Service period. PSNH asserts that the maintenance schedule is confidential commercial information potentially eligible for protection from public disclosure under RSA 91-A:5,(IV). PSNH also requests that service of the response not be required for the competitive/alternative power suppliers who have intervened in this proceeding: Freedom Logistics, LLC, Halifax-American Energy Company, LLC, TransCanada Power Marketing, Ltd., and the New England Power Generators Association, Inc. In support of its Motion for Protective Order, PSNH says the following:

1. The data request is as follows:

**NSTF-01 Q- STAFF-010**

**Question:**

Reference Attachment RAB-2, page 3. Please provide a schedule, by generating unit, of the planned maintenance outages during the twelve month ES period. Please include a description of the work to be performed as well as the estimated costs and duration of each outage.

The response contains a schedule of the weeks when the planned maintenance outages are scheduled to take effect with the precise days when each outage is planned to begin and end. PSNH submits this information to the Independent System Operator for New England (ISO New England); however, this information is kept confidential and not shared with the public or other participants. The schedule is not disclosed outside of the Company.

2. Before granting confidential treatment, the Commission must use a balancing test in order to weigh the importance of keeping the record public with the harm from disclosure of confidential plans for scheduled maintenance activities. Clearly the harm outweighs the need for public disclosure or providing this response to the interveners in this proceeding. “Under administrative rule Puc §204.06 [predecessor to Puc§ 203.08], the Commission considers whether the information, if made public, would likely create a competitive disadvantage for the petitioner; whether the customer information is financially or commercially sensitive, or if released, would likely constitute an invasion of privacy for the customer; and whether the information is not general public knowledge and the company takes measures to prevent its' dissemination.” *Re Northern Utilities, Inc.*, 87 NH PUC 321, 322, Docket No. DG 01-182, Order No. 23,970 (May 10, 2002).

3. Release of this information to the public, including competitive market participants, places PSNH at a distinct disadvantage when it plans to purchase energy to supply its customers during times when major generating stations are undergoing planned maintenance. This disadvantage persists as long as PSNH is supplying Default Energy Service and as long as PSNH owns generation. This disadvantage would harm PSNH's customers directly, as PSNH should always be in a position to negotiate at arms length to purchase replacement power at the lowest possible cost. If PSNH's major maintenance schedule becomes public information, the competitive market will know the distinct periods when PSNH must supplement its normal energy needs to replace the production from major generating stations that are out of service due to scheduled maintenance. A similar

motion was granted in the previous Default E energy Service rate setting proceeding. Docket DE 08-113, Order No. 24,920, slip op. at 6 (December 12, 2008).

5. It has been customary practice to grant confidential treatment to confidential commercial information such as major maintenance schedules and to restrict dissemination 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, 292 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 to restrict access to this information from the competitive and alternative suppliers in this proceeding. *See*, Secretarial Letter of November 4, 2009 limiting intervention to non-confidential material; RSA 541-A:32, III.

WHEREFORE PSNH respectfully requests the Commission issue an order preventing the public disclosure of the response to NSTF-01, Q-STAFF-010 to and to order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

November 24, 2009  
Date

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## 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.

November 24, 2009  
Date

Gerald M. Eaton  
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