

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: SUPPLEMENTAL POWER SUPPLY  
AND COAL SUPPLY CONTRACTS

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 attachments to the responses to two data requests propounded by the Staff. The attachments contains details of the supplemental power purchase contracts entered into by PSNH for calendar year 2010 and details of the coal supply contracts for the Schiller and Merrimack generating stations. PSNH asserts that this information 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 requests are as follows:

**NSTF-01 Q- STAFF-013**

**Question:**

Reference Attachment RAB-2, page 3, lines 24-25. For the known purchases, please provide a list of the contracts including the dates they were executed, the duration of the contracts, the contracting party, the quantity purchased and the purchase prices. Please also describe any financial assurances required in the contracts.

**NSTF-01 Q- STAFF-021**

**Question:**

Please provide, in a format similar to the response to NSTF-01, Q-STAFF-017 in DE 08-113, a list of all coal contracts currently in effect. For each contract, please identify the contracting party, source of the coal, sulfur content, price per ton (indicating whether it is a mine-mouth or delivered price), whether the coal is for use at Merrimack, Schiller or both, and the duration of the contract.

The attachments to Response No. 13 includes the contracting party, date of execution, duration, quantity and price of power secured through bilateral purchases that have been entered into for the upcoming Default Energy Service rate period. The attachment to Request No. 21 contains the details of coal supply contracts in place for PSNH's Merrimack and Schiller generating stations.

2. Before granting confidential treatment, the Commission must use a balancing test in order to weigh the importance of keeping open the record of this proceeding with the harm from disclosure of confidential financial or competitive information. "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. The limited benefits of disclosing the information are outweighed by the harm that will be done by disclosing the information. Pricing terms with power suppliers and fuel suppliers have traditionally been kept confidential. *See, Re EnergyNorth Natural Gas, Inc. dba KeySpan Energy Delivery New England*, Docket No. DG 03-068, Order No. 24,167, 88 NH PUC 221 , 226 (2003).

4. Release of this information would put PSNH at a disadvantage with respect to negotiations in the future with suppliers of supplemental power. Traditionally these contracts and purchase power agreements have been kept confidential to protect both parties. Suppliers may not want to negotiate future supply contracts if they assume that the information in the final contract will be made public. Fewer suppliers means a less competitive market in which PSNH will procure supplemental power supplies and its coal supply. A similar motion was granted in the previous Default Energy Service rate setting proceeding. Docket No. DE 08-113, Order No. 24,920, slip op. at 6 ("Coal and power supply contracts are generally kept confidential to protect both buyer and seller.") (December 12, 2008).

5. PSNH should be permitted to negotiate and enter into power supply and fuel supply contracts with the same level of confidentiality that other businesses have in conducting their own procurement activities.

This court has long recognized as public policy that the owners of a utility do not surrender to the PUC their rights to manage their own affairs merely by devoting their private business to a public use. In *Grafton County Electric Light & Power Co. v. State*, 77 N.H. 539, 94 A. 193 (1915), we construed the phrase "public good" within the meaning of a public-utilities statute substantially similar to the forerunner of RSA 369:1:

"If it is reasonable that a person or a corporation have liberty to take a certain course with his or its property, it is ... for the public good. It is the essence of free government that liberty be not restricted save for sound reason. *Stated conversely: it is not for the public good that public utilities be unreasonably restrained of liberty of action, or unreasonably denied the rights as corporations which are given to corporations not engaged in the public service.*"

77 N.H. at 540, 94 A. at 194 (emphasis added).

*Appeal of Public Service Company*, 122 NH 1062, 1066-67 (1982)

This argument is not to say that the Commission, its Staff and the Office of Consumer Advocate may not have access to confidential information as PSNH has already provided this information under NH Code Admin. Rule Puc § 203.08(d).

6. It has been customary practice to grant confidential treatment to confidential commercial information such as power supply and coal supply contracts 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, 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 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 to issue an order preventing the public disclosure of the attachments to the responses to NSTF-01, Q-STAFF-013, and NSTF-01, Q-STAFF-021 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  
Gerald M. Eaton