

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

DE 09-180

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
2010 PROPOSED DEFAULT ENERGY SERVICE RATE**

**Partial Objection to PSNH's Motion for Protective Order
Re: Supplemental Power Supply and Coal Supply Contracts**

NOW COMES TransCanada Power Marketing Ltd. ("TransCanada") and objects to a portion of Public Service Company of New Hampshire's ("PSNH") Motion for Protective Order re Supplemental Power Supply and Coal Supply Contracts (regarding responses to two data requests from the Commission Staff: Data Request Set No. 01, Request Q-STAFF-013 and Q-STAFF-021) ("Motion"). In support of this objection to the Commission providing protective treatment for the response to Q-STAFF-013, TransCanada states as follows:

1. During the first round of discovery in the instant action, Commission Staff asked the following data request:
 13. 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.
2. On November 24, 2009, PSNH filed the Motion, asking the Commission to issue an order preventing the public disclosure of the attachments to the responses to NSTF-01, Q-STAFF-013 and Q-STAFF-021 and to order such further relief as may be just and equitable. In support of the Motion PSNH cited the balancing test the

Commission must use and argued that “the limited benefits of disclosing the information are outweighed by the harm that will be done by disclosing the information.” (Motion, page 2.) PSNH also argued that pricing terms with power suppliers and fuel suppliers have traditionally been kept confidential and further stated that release of this information would put PSNH at a disadvantage with respect to negotiations with suppliers in the future. PSNH’s argument is essentially that competitive suppliers should not have access to all of the information that it provided in response to Q-STAFF-013.

3. In a case that PSNH cited in support of its Motion, *Re EnergyNorth Natural Gas, Inc. dba KeySpan Energy Delivery New England*, 88 NH PUC 221 (2003), where the Commission granted a motion for protective order, the facts were different in one significant way. In that case KeySpan specifically represented to the Commission that it was “contractually obligated to maintain the confidentiality of the price provisions of the agreement”. 88 NH PUC at 225. PSNH has made no such representation here.

4. The requested information regarding the agreements to purchase power for which PSNH seeks approval to include in the default service rate in this docket goes to the very heart of the issue that the Commission must determine, i.e. whether the costs of the power that it purchases to meet default service customer demand are reasonable and prudent. RSA 369-B:3, IV(b)(1)(A). The prices that PSNH paid to purchase power in 2008, but that it intends to use to supply default service customers in 2010, are clearly relevant to this proceeding.

5. TransCanada believes that some or all of the information that Staff are seeking through this data request should be made available to TransCanada and the public. Although PSNH argues that competitive suppliers should not be able to see this

information, the NH Supreme Court has held that the right to know law gives to any member of the general public as much right to disclosure as one with a special interest in a particular document. *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106, 109 (2005). At a minimum PSNH could leave out the name of the supplier and provide the other requested information to TransCanada. It could also aggregate the purchases in each month and provide one overall monthly value for the price, MWH volume and term. In addition PSNH could describe the financial assurances in the contracts, as the last sentence of the data request asks. Providing this information, while leaving out the supplier's name, should alleviate PSNH's concerns. It would also be consistent with the approach that the Commission used in its recent order in DE 09-035, Order No. 25,037, where it found a compromise that "provides a level of disclosure sufficient to shed light on the Commission's actions, while still honoring the privacy interests of the Company's employees." Order at page 11. In the case at hand the Commission could exclude the name of the supplier, but still provide the information that TransCanada is seeking. Doing so would shed light on PSNH's actions, while still honoring the privacy of the suppliers. TransCanada believes that this is important information on the issue of whether PSNH has met its burden of proving that it meets the criteria set forth in the statute cited above and whether any recommendation PSNH might have to transfer some portion of the costs of providing such power to customers who have migrated from default service is appropriate, reasonable and consistent with restructuring principles.

6. TransCanada has also offered to sign a nondisclosure agreement in this docket, but PSNH would not agree to that. TransCanada would still be happy to sign a non-

disclosure agreement if that would be easier than what it proposes above and if the Commission deems that appropriate and necessary.

7. TransCanada submits that it is important to remember, as the Commission noted in the *EnergyNorth* order cited above, that the NH Supreme Court has instructed state agencies that they should “construe this exemption narrowly”. 88 NH PUC at 226. RSA 91-A:1 provides: “Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.” Because PSNH is a regulated utility, the power purchases that it has made, the costs of which are borne by PSNH’s ratepayers, and the process that it uses to make such power purchases should be open and transparent. The benefits of keeping some, if not all, of such information open to the public clearly outweigh any harm that might be caused by making such information available.

8. The burden of proving the necessity of providing protective treatment to all of the information included in the response to Q-STAFF -013 falls on PSNH. TransCanada submits that PSNH has not met that burden.

WHEREFORE, TransCanada respectfully requests that this honorable Commission:

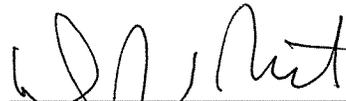
A. Deny PSNH’s request for protective treatment of the response to Q-STAFF-013;

B. In the alternative, grant PSNH’s request only in so far as the name of the supplier for the contracts is concerned; and

C. Grant such further relief as it deems appropriate.

Respectfully submitted,

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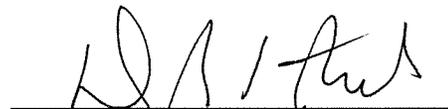


Douglas L. Patch

November 25, 2009

Certificate of Service

I hereby certify that on this 25th day of November, 2009 a copy of the foregoing motion was sent by electronic mail or first class mail, postage prepaid to the Service List.



Douglas L. Patch

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