

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

Petition for Approval of PPA with Laidlaw Berlin BioPower, LLC

Docket No. DE 10-195

**CITY OF BERLIN'S MOTION FOR CONFIDENTIAL TREATMENT PURSUANT
TO RSA 91-A AND N.H. CODE ADMIN. RULES PUC 203.08**

NOW COMES the City of Berlin, (“the City”) and respectfully requests that the Public Utilities Commission (“PUC”) issue a protective order to maintain the confidentiality of certain confidential information contained in the responses and attachments by the City to the Data Requests of the Wood-Fired Independent Power Producers. In support of this Motion, the City states as follows:

1. Puc Rule 203.08(a) provides that the Commission will issue a protective order providing for confidential treatment of documents that “are entitled to such treatment pursuant to RSA 91-A:5 or other applicable law.” Puc 203.08(a).
2. The party seeking confidential treatment of documents must file a motion containing: (1) the documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought; (2) specific reference to the statutory or common law support for confidentiality; and (3) a detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment. Puc 203.08(b).
3. Data Requests 1-3 and 1-5 collectively request all documents relied upon by Mr. Sansoucy in forming his opinion regarding whether “the high gas price, high capacity

price, and/or cap and trade scenarios referenced on page 9 of his testimony are more likely than not to occur.” Question 1-3. (The Data Requests are attached at **Attachment A**).

4. Question 1-4 requests “all calculations and work papers that Mr. Sansoucy or anyone at George E. Sansoucy, P.E., LLC prepared to arrive at the figure of \$300,000,000 in ratepayer savings referenced on page 9 of his testimony[.]”
5. Copies of the City’s responses to these requests, not including the confidential information and materials, are attached hereto at **Attachment B**. Pursuant to Puc 203.08(b)(1), the City includes “a detailed description of the types of information for which confidentiality is sought” rather than providing the documents themselves at this point.
6. The City is seeking confidential treatment of the following: the Electricity and Fuel Price Outlook Power Reference Case Study copyrighted 2010 by Ventyx (“Ventyx Study”) relied upon by Mr. Sansoucy in forming his opinions referenced in Data Requests 1-3, 1-4 and 1-5.; the Natural Gas Price Outlook prepared by Energy Solutions, Inc. (“Energy Solutions Outlook”) relied upon by Mr. Sansoucy in forming his opinions referenced in Data Requests 1-3, 1-4 and 1-5, and the internal files (“Sansoucy Company Files”) of George E. Sansoucy, P.E. LLC (“Sansoucy LLC”) which contain information from other companies on natural gas pipelines and power generation facilities in New York and New England relied upon by Mr. Sansoucy in forming his opinions referenced in Data Requests 1-3, 1-4 and 1-5.
7. The Ventyx Study, available for all regions in North America “provide[s] [a] standardized analysis of market fundamentals . . . us[ing] a . . . methodology,

perfected over years of analysis and based on market fundamentals, to predict the price formation process for each region. . . . These results are then summarized in each of Ventyx's five regional Power Market Outlooks, published in the spring and fall of each year. Ventyx has provided power price consulting services for many years and has published this standardized market advisory service since 2000."

<<http://www.ventyx.com/news/2008/07-21-08-outlook-reports.asp>>;

<<http://www.ventyx.com/advisory/regional-forecasts.asp>>.

8. The Ventyx Study is copyrighted by Ventyx and is only provided to those who have a paid subscription agreement with Ventyx. Sansoucy LLC is one such paid subscriber.
9. The Ventyx copyright of the Ventyx Study is attached at **Attachment C**. The copyright prohibits disclosure of the Ventyx Study without the express written permission of Ventyx. The City is presently attempting to obtain written permission from Ventyx to disclose the Ventyx Study, in confidence, to Commission Staff and to the OCA. If written permission is obtained, the City will provide copies of the Ventyx Study directly to the Commission pursuant to a protective order and to the Office of Consumer Advocate ("OCA") pursuant to a confidentiality agreement, with the relevant documents marked "Confidential."
10. Subject to the City obtaining such written permission from Ventyx, the City seeks a protective order that only the Commission staff assigned to this Docket and the Commissioners be permitted copies of this proprietary and confidential information. Further, subject to the City obtaining such written permission from Ventyx, the City seeks a protective order that the Office of Consumer Advocate ("OCA") may be

provided with copies of this confidential information only pursuant to a confidentiality agreement.

11. The Energy Solutions Outlook is published by Energy Solutions, Inc., an independent natural gas analytical and consulting firm. It is written by Valerie Wood, the president of Energy Solutions. <<http://www.naturalgasoutlook.com/>>. The Table of Contents and Executive Summary, which are available online, are attached at **Attachment D**.
12. The Energy Solutions Outlook is copyrighted and is only provided to those who have a paid subscription agreement with Energy Solutions. Sansoucy LLC is one such paid subscriber. The Energy Solutions Outlook copyright is attached at **Attachment E**.
13. The Energy Solutions Outlook copyright prohibits its disclosure without the express written permission of Energy Solutions. The City is presently attempting to obtain written permission from Energy Solutions to disclose this information, in confidence, to Commission Staff and to the OCA. If written permission is obtained, the City will provide copies of the Energy Solutions Outlook directly to the Commission pursuant to a protective order and to the OCA pursuant to a confidentiality agreement, with the relevant documents marked “Confidential.”
14. Subject to the City obtaining such written permission from Energy Solutions, the City seeks a protective order that only the Commission staff assigned to this Docket and the Commissioners be permitted copies of this proprietary and confidential information. Further, subject to the City obtaining such written permission from Energy Solutions, the City seeks a protective order that the OCA may be provided

with copies of this confidential information only pursuant to a confidentiality agreement.

15. The Sansoucy Company Files contain confidential information received from power generation facilities and natural gas pipeline companies in New York and New England in unrelated matters where Sansoucy LLC represented multiple towns and cities in various tax and court cases. These facilities and companies are not parties to this proceeding.
16. RSA Chapter 91-A (“the Right to Know Law”) provides that the public has the right to inspect governmental records held by the Commission. However, confidential, commercial or financial information is exempt from disclosure. RSA 91-A:5, IV.
17. The Commission applies

the three-step analysis applied by the New Hampshire Supreme Court in Lambert v. Belknap County Convention, 157 N.H. 375, 382 (2008), in determining whether the identified information . . . should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure.

Granite State Electric Co. d/b/a National Grid, DE 10-020, Order No. 25,150, 2010

N.H. PUC LEXIS 89 *13 (N.H. PUC Sept. 27, 2010) (internal citations omitted).

18. The Ventyx Study was provided to Sansoucy LLC pursuant to a subscription service, which Sansoucy LLC pays for, and subject to a strict copyright prohibiting its disclosure without express written permission from Ventyx. The Ventyx Study

- contains trade secret information on market forecasting prepared by Ventyx such that it is proprietary and confidential information, the disclosure of which would invade the privacy interest of Ventyx.
19. The Energy Solutions Outlook was provided to Sansoucy LLC pursuant to a subscription service, which Sansoucy LLC pays for, and subject to a strict copyright prohibiting its disclosure without express written permission from. The Energy Solutions Outlook contains trade secret information on market forecasting prepared by Energy Solutions such that it is proprietary and confidential information, the disclosure of which would invade the privacy interest of Energy Solutions.
 20. The City notes that the Word-Fired IPP's expert, if any, may be a subscriber to these above-listed subscription services and may be able to obtain these documents pursuant to his or her own subscription.
 21. The Sansoucy Company Files contain proprietary and confidential information about third party power generation and gas pipeline companies. The disclosure of this information would invade the privacy interests of these companies which provided this information to Sansoucy LLC with the understanding that this information would be kept confidential.
 22. The public has little to no interest in the disclosure of any of the above information. This information is not prepared by Mr. Sansoucy or the City but rather contains third party analyses of market data, and information about companies not involved in this proceeding. Disclosure of this information therefore would not "inform the public of the conduct and activities of its government." Granite State Electric Co. d/b/a National Grid, 2010 N.H. PUC LEXIS 89 *13.

23. However, even if there were a public interest in the disclosure of this information, the privacy interests in non-disclosure outweigh any public interest in disclosure. Given the nature of the proprietary information, which contains trade secrets and analyses copyrighted by Ventyx and Energy Solutions and proprietary information about third party power generation and gas pipeline companies, public disclosure of this information would likely impair the City's ability (through Mr. Sansoucy) to obtain such important and necessary analytical information in the future because these companies would be unwilling to supply this information knowing it is subject to public disclosure. See Union Leader Corp. v. New Hampshire Housing Finance Authority, 142 N.H. 540, 553-54 (1997) (holding that the government's "ability to obtain necessary information in the future" is a factor in determining confidentiality and disclosure of the identified information).

WHEREFORE, the City respectfully requests the Commission:

- A. Grant this Motion for Confidential Treatment;
- B. Issue a protective order for the Ventyx Study referenced in the City's responses to the Data Requests of the Wood-Fired Independent Power Producers, limiting the release of this information, subject to the City obtaining written permission from Ventyx, to the Commission Staff and the Commissioners, and to the OCA pursuant only to an executed confidentiality agreement;
- C. Issue a protective order for the Energy Solutions Outlook referenced in the City's responses to the Data Requests of the Wood-Fired Independent Power Producers, limiting the release of this information, subject to the City obtaining written permission from

Energy Solutions, to the Commission Staff and the Commissioners, and to the OCA pursuant only to an executed confidentiality agreement

D. Issue a protective order for the Sansoucy Company Files referenced in the City's responses to the Data Requests of the Wood-Fired Independent Power Producers, and

E. Grant such other and further relief as the Commission deems just and equitable.

Respectfully submitted,

THE CITY OF BERLIN

By its attorneys:

DONAHUE, TUCKER & CIANDELLA, PLLC

Date: 11 January 2011

By: /s/ Keriann Roman
Robert D. Ciandella, Esq.
Christopher L. Boldt, Esq.
Keriann Roman, Esq.
225 Water Street
Exeter, NH 03833
(603) 778-0686

CERTIFICATE OF SERVICE

Pursuant to Rules Puc 203.02(2) and Puc 203.11, I hereby certify that on this 11th day of January 2011, I served copies of this Motion to those parties listed on the Service List and to the Office of Consumer Advocate.

/s/ Keriann Roman
Keriann Roman, Esq.