

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Least Cost Integrated Resource Plan

Docket No. DE 10-261

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S MOTION FOR
PROTECTIVE ORDER RE: GENERATOR START UP AND MINIMUM RUNS

Pursuant to RSA 91-A:5,(IV)(Supp.) and N.H. Code Admin. Rules Puc § 203.08, Public Service Company of New Hampshire ("PSNH") hereby requests protective treatment for the attachment to a response to a data request propounded by the Conservation Law Foundation at a technical session held in this proceeding on June 22, 2011. PSNH contends that the information is confidential business information and should be protected from public disclosure. In support of its Motion for Protective Order, PSNH says the following:

1. The data request, Set No. TS-02, Q-TS-010, is as follows:

Question:

With respect to PSNH's response to CLF-02, Q-003, please provide, for each of Merrimack units 1 and 2, and Schiller units 4 and 6, the start up cost (in mmbtu's and estimated dollars), ramp up time, and the minimum run time, as provided to ISO-NE in 2011. As discussed, we are willing to subject this response to a non-disclosure agreement with mutually acceptable terms.

2. The attachment to Q-TS-10 contains details of the minimum run times for the Merrimack and Schiller coal-fired plants, the MMbtus required for start-up, and the hours required to begin providing power to the grid from a hot start and from a cold start condition. This data is not publically available. This information for all generating plants is closely protected by the Independent System Operator in its secure data base. It is considered business competitive information by PSNH, and PSNH believes any other independent generator would oppose public disclosure of

this information related to its own plants.¹ Access to this information would enable competitors to model more accurately the likely dispatch of PSNH's generating units. Independent generators would gain an edge in determining whether their units will run before PSNH's units, and therefore gain an advantage with respect to their bidding strategies, to the detriment of customers.

3. The disclosure of this information would be harmful to PSNH and its customers. PSNH would be at a competitive disadvantage with respect to independent generator owners who have the information contained in the attachment to Request No. 10. Energy Service customers of PSNH would in turn be harmed by disclosure because PSNH's generation would be at a disadvantage to other generators in the competitive market.

4. Before granting confidential treatment, the Commission must use a three step process in order to weigh the importance of keeping the record public with the harm from disclosure of confidential information.

In determining whether commercial or financial information should be deemed confidential and private, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap Coun(v) Convention*, 157 N.H. 375, 382 (2008). First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure; when commercial or financial information is involved, this step includes a determination of whether an interest in the confidentiality of the information is at stake. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. 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 nondisclosure. *Id.* Docket No. DG08-048, Order No. 25,014, slip op. at 3, *cited in* Order No. 25,254 (June 14, 2011).

¹ Information regarding cold starts, hot starts and minimum run times for Newington Station have been provided through the Continued Operation Study or through discovery. Given the specific focus on Newington Station in this proceeding, PSNH chose not to protect that information, although the company has requested protective treatment for Newington specific information in previous default energy service proceedings.

“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).

5. Clearly the harm from disclosure outweighs the need for public disclosure or providing this response to the competitive supplier interveners in this proceeding. As described above, PSNH has a clear privacy interest in preventing public disclosure of this operational information. The public interest in disclosure is to “inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted.” Order No. 25,234, slip op. at 2. In order to know how the Commission evaluates PSNH’s least cost planning, the public does not need to know the specifics of the start up cost in mmBtus of PSNH’s generating plants, each unit’s ramp up time, and the minimum run time. The public’s need to know the workings of government should be satisfied with the fact that this confidential operational information may come before the Commission in some fashion in order to facilitate the investigation of PSNH’s planning process.

6. Certain intervenors in this proceeding, TransCanada Power Marketing Limited and TransCanada Hydro Northeast, Inc. (“TransCanada”), Granite Ridge Energy L.L.C. (“Granite Ridge”), New England Powder Generators Association (“NEPGA”) and Freedom Energy Logistics, LLC /Halifax America Energy Company, LLC (“FEL/HAEC”), are participants or represent participants in the power supply market at the wholesale and/or retail level. It has been the Commission’s practice in the past to grant protective treatment to confidential commercial information such as power supply and coal supply contracts and to not require dissemination of that information 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 and permissible to restrict access to this information from the environmental litigant intervenors and competitive supplier intervenors in this proceeding in this proceeding. *See*, RSA 541-A:32, III.

WHEREFORE PSNH respectfully requests the Commission issue an order preventing the public disclosure of the attachment to the response to data request Set No. TS-02, Q-TS-010, by not requiring dissemination of the confidential materials to TransCanada, Granite Ridge, NEPGA and FEL/HAEC, and to order such further relief as may be just and equitable.

Respectfully submitted,
Public Service Company of New Hampshire

July 7, 2001
Date

By: Gerald M. Eaton
Gerald M. Eaton
Senior Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
(603) 634-2961

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.

July 7 2011
Date

Gerald M. Eaton
Gerald M. Eaton