

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

Docket No. DE 10-261

PUBLIC SERVICE OF NEW HAMPSHIRE

2010 Least Cost Integrated Resource Plan

**CONSERVATION LAW FOUNDATION'S OBJECTION
TO PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S MOTION TO AMEND
ITS JULY 15, 2011 MOTION FOR PROTECTIVE ORDER**

The Conservation Law Foundation (CLF) hereby objects to the Motion To Amend Its July 15, 2011 Motion for Protective Order Re: Detailed Five Year Capital Budgets filed with the Commission on August 9, 2011 by Public Service Company of New Hampshire (PSNH). In support of this objection, CLF states the following:

1. In this proceeding, the Commission previously denied PSNH's motion seeking confidential treatment for the company's capital budgets for each of the next five years, how the budgets are derived and the process the company uses to determine which investments to make. Order 25,234, June 14, 2011. In its Order, the Commission determined that the PSNH had not met "the threshold requirement of an invasion of privacy resulting from competitive harm" and recognized the clear relevance of the Company's future capital planning to the statutory purposes of the LCIRP process.

2. In its Motion, PSNH seeks to establish a new privacy interest which it alleges would be invaded by disclosure: that disclosure could cause "potential harm" as facts that could be relevant to CLF's pending environmental enforcement litigation relating to certain alleged violations of the federal Clean Air Act at Merrimack Station. Motion at p. 4. Unlike the potential for competitive harm addressed by the Commission in Order 25,234, the alleged

privacy interest cited by PSNH has no bearing to this proceeding or grounding at law as a legally valid as a basis for meeting the threshold requirement for an “invasion of privacy.”

3. PSNH’s detailed capital planning and budgets are fundamental considerations relating to whether PSNH’s planning process “is adequate as defined by the requirements set forth in RSA 378:38 and 39 and Order 24,945 and whether it is consistent with RSA Chap. 374-F and RSA 369-B:3a.” Order of Notice, November 3 2010. RSA 378:38 specifically requires the Commission to assess “the plan’s long and short term environmental, economic and energy price and supply impact to the state.” In Order 25,234 (at page 10), the Commission found a strong public interest in information relating to the “company’s own internal plans” as they relate to the purposes of the LCIRP statutory framework.

4. As a full party to this proceeding, CLF submitted extensive expert testimony, at significant expense to CLF, addressing: the adequacy of the Company’s internal planning; the future effects of market conditions and pending environmental regulations on the PSNH generating units and least cost planning obligations; and the future projected operating costs and projected revenue for Schiller Station. Testimony of Douglas Hurley, Synapse Energy Economics. July 27, 2011. Making the requested information available for review by intervenors and experts with the expertise and experience to assist the Commission is vital to the Commission’s review and the fairness of the process. Preventing CLF from reviewing critical and fundamentally-relevant information would inhibit CLF’s intervention and investment in this docket, and its ability to protect the “rights, duties, privileges, immunities or other substantial interests” of CLF and its many New Hampshire members that may be affected by this proceeding. See RSA 541-A:32; Admin. Rule Puc 203.17.

5. PSNH's concerns regarding the possible effect of disclosing information which is at the heart of the LCIRP review to unrelated litigation in another forum are disingenuous and legally defective. In accordance with the Order 25,234 in this proceeding and longstanding practice before the Commission, CLF and PSNH are in the midst of negotiating a non-disclosure agreement (NDA) relating to numerous discovery responses for information available to non-competitive parties like CLF but not to so-called competitive parties. As is the case in prior NDAs between CLF and PSNH in PUC proceedings, the NDA will provide that CLF "shall not use the Confidential Information, or any portion of the contents of the Confidential Information, for any purpose other than the preparation for and conduct of this specific proceeding, such as the analysis necessary for preparation of testimony or cross examination." And that "Confidential Information shall not be used in any other forum or proceeding." Attached hereto as Exhibit 1 is a true and correct copy of an email exchange between counsel for PSNH and CLF and the draft NDA containing such language, and which accurately reflects the current status of our discussions regarding an NDA for this proceeding. In addition, as has been the case in prior PUC dockets, CLF will return the originals and any / all copies of such confidential information at the close of this proceeding. CLF respectfully submits that the same or similar NDA language will fully alleviate the privacy concerns expressed by PSNH while safeguarding CLF's due process rights as a party to this proceeding.

6. The burden of proving that a protective order is necessary falls on PSNH and CLF submits that PSNH has not met its burden. As discussed above, the information PSNH seeks to protect is necessary to evaluate its least cost planning and unquestionably, PSNH will seek to have ratepayers pay for the costs of these capital projects once they are completed. CLF and its members, as ratepayers and parties to this proceeding, must be able to assess and inform the

Commission's review as to whether PSNH's planning is consistent with the statutory requirements and the ratepayers' interests. Contrary to the express requirements of N.H. Admin. Code Rules PUC 203.08(b), PSNH's motion fails to provide "a specific reference to the statutory or common law support for confidentiality" as pertaining to CLF or "a detailed statement of the harm that would result from disclosure" to CLF. PSNH's Motion lacks any specific allegation of the harm that would result or how disclosure of such information would result in harm.

7. The cases cited by PSNH are inapplicable and easily distinguishable from the facts at hand. By citing *Perras v. Clements*, 127 N.H. 603 (1986), PSNH erroneously suggests that CLF is impermissibly using the LCIRP docket as a means to gain information for the pending environmental enforcement case. *Perras* does not address an information request germane to the matter at hand in an ongoing proceeding; rather it involved a litigant with the State who submitted an RSA 91-A information request in lieu of discovery in the ongoing litigation. In the pending environmental enforcement proceeding, CLF has not alleged that any future capital project by PSNH violated the law, nor could it. PSNH's future capital budgets are, however, directly relevant to the Commission's review of the adequacy of PSNH's LCIRP.

8. PSNH is even more off base in its assertion that the Commission's decision to grant a protective order for an agreement covering costs for environmental remediation, between utilities Keyspan and UGI Utilities, provides a meaningful precedent. As noted in *Re EnergyNorth Natural Gas, Inc.*, 88 N.H. P.U.C. 236 (1991), "the terms of the settlement require Keyspan to keep the terms of the settlement strictly confidential." *Id. at 244*. Thus, disclosure would have violated the settlement agreement between the parties. Moreover, the Commission noted that such confidentiality provisions are common and no party objected to the request. *Id. at 248*. There is no such risk of violating a confidentiality agreement in the present docket.

6. The Commission has not looked favorably on requests to deny parties access to relevant information, finding that “whatever information we might reasonably rely upon in making a decision should be accessible to all Parties. . . .” *North Atlantic Energy Corporation*, 87 NH PUC 396, 399 (2002), cited in *City of Nashua, Petition for Valuation Pursuant to RSA 38:9*, Order No. 24,495 (July 29, 2005). The Commission’s reluctance to deny parties access to information that the Commission may rely upon reflects important due process considerations in litigation. As the Commission observed in *Re EnergyNorth Natural Gas, Inc. dba Keyspan Energy Delivery of New England*, 88 NH PUC 221, 226 (2003), the New Hampshire Supreme Court has instructed state agencies that they should “construe this exemption narrowly.”

WHEREFORE, CLF respectfully requests that the Commission:

A. Deny PSNH’s request to amend its July 15 Motion and withhold disclosure to CLF the attachment to OCA-02, Q-OCA-004; and

B. Grant such further relief as it deems appropriate.

Respectfully submitted,

CONSERVATION LAW FOUNDATION

By:



N. Jonathan Peress
New Hampshire Advocacy Center
Conservation Law Foundation
27 North Main Street
Concord, New Hampshire 03301-4930
Tel.: (603) 225-3060
Fax: (603) 225-3059
njperess@clf.org
mhoffer@clf.org

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August 2011, a copy of the foregoing Objection was sent electronically or by First Class Mail to the service list.



N. Jonathan Peress
New Hampshire Advocacy Center
Conservation Law Foundation
27 North Main Street
Concord, New Hampshire 03301-4930
Tel.: (603) 225-3060
Fax: (603) 225-3059
njperess@clf.org