

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

SPECTRA ENERGY PARTNERS, LP

Docket No. IR 15-124

Motion for Confidential Treatment
Pursuant to RSA Chapter 91-A
And
N.H. Code Admin. Rules Puc § 203.08

WHEREAS, pursuant to New Hampshire Revised Statutes Annotated (“RSA”) 91-A:5 and New Hampshire Code of Administrative Rules Puc (“Puc”) § 203.08(b) Spectra Energy Partners, LP (“Spectra” or the “Company”) hereby respectfully requests the New Hampshire Public Utilities Commission (the “Commission”) issue a protective order that provides confidential treatment for certain confidential, commercial, or financial information contained in Spectra’s responses to Staff’s July 15, 2015 Questions issued in the above-referenced docket. The information for which confidential treatment and protection is sought includes Spectra’s responses, in excel tables, to Staff’s July 15, 2015 Questions Number 3 and 10 (iv) (“Confidential Documents”). Spectra’s Confidential Documents are attached hereto. Spectra is requesting confidential treatment of all data contained in the tables. All other information provided as part of Spectra’s responses to Staff’s July 15, 2015 Questions would not be deemed confidential.

In support of this Motion for Confidential Treatment, Spectra says the following:

1. RSA Chapter 91-A is commonly referred to as the “Right-to-Know Law.” The Right-to-Know Law provides each citizen with the right to inspect government records in the possession of the Commission. However, under RSA 91-A:5, certain government records are exempted from the disclosure requirements of RSA Chapter 91-A. In particular, RSA 91-A:5, IV exempts from disclosure records pertaining to confidential, commercial, or financial information.

2. Puc § 203.08(a) provides that the Commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law.
3. Puc § 203.08(b) requires a motion for confidential treatment to include: i.) the documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought; ii.) specific reference to the statutory or common law support for confidentiality; and, iii.) a detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.
4. On July 30, 2015, Staff Attorney/Hearings Examiner Alexander F. Speidel, Esq. distributed an electronic correspondence to the service list of the above-referenced docket providing “final guidance” concerning “materials considered by stakeholders to be commercially sensitive, confidential information, that may be included in submissions made in response to Staff’s written questions in this investigation . . .” The final guidance indicated that responses including confidential information should be presented in a redacted and unredacted format in conformance with Puc § 201.04(b) and (c) and accompanied with a motion for confidential treatment filed with the Commission pursuant to Puc § 203.08.
5. The New Hampshire Supreme Court (the “Court”) has addressed the requirements of the Right-to-Know Law on several occasions. Most recently, in *Professional Firefighters of New Hampshire v. Local Government Center, Inc.*, 159 N.H. 699 (2010), the Court noted: “The Right-to-Know Law does not guarantee the public an unfettered right of access to all governmental workings, as evidenced by the statutory exceptions and exemptions.” *See also, Goode v. New Hampshire Office of Legislative Budget & Assistant*, 148 N.H. 551, 553 (2002), and *Brent v. Paquette*, 132 N.H. 415, 426, (1989) (“[T]he Right-to-Know Law guarantees every citizen the right to inspect all public records except as otherwise prohibited by statute or RSA 91-A:5.” (quotation omitted)).

6. The Court has provided guidance regarding the confidential, commercial, or financial information exemption of the Right-to-Know Law. The Court has noted:

The terms “commercial or financial” encompass information such as business sales statistics, research data, technical designs, overhead and operating costs, and information on financial condition. *Landfair v. United States Dept. of Army*, 645 F.Supp. 325, 327 (D.D.C.1986); *see Comstock Intern. v. Export-Import Bank of U.S.*, 464 F.Supp. 804, 806 (D.D.C.1979) (loan agreements are financial or commercial information). Whether documents are commercial depends on the character of the information sought. Information is commercial if it relates to commerce. *See American Airlines, Inc. v. Nat. Mediation Bd.*, 588 F.2d 863, 870 (2d Cir.1978).

Union Leader Corp. v. New Hampshire Housing Finance Authority, 142 N.H. 540, 533 (1997). The Court continued to explain that:

“To determine whether [records] ... are exempt as confidential, the benefits of disclosure to the public must be weighed against the benefits of nondisclosure to the government.” *Chambers v. Gregg*, 135 N.H. 478, 481 (1992). We find instructive the standard test employed by the federal courts: To show that information is sufficiently “confidential” to justify nondisclosure, the party resisting disclosure must prove that disclosure “is likely: (1) to impair the [State’s] ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *National Parks and Conservation Ass’n v. Kleppe*, 547 F.2d 673, 677-78, (D.C.Cir.1976) (quotations omitted) (National Parks II).

7. When determining whether commercial or financial information should be deemed confidential and private, the Commission has consistently followed *Union-Leader* as well as the three-step analysis the New Hampshire Supreme Court applied in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008). The Lambert analysis requires:

- i) 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;
- ii) when a privacy interest is at stake, the public’s interest in disclosure is assessed; and,
- iii) when there is a public interest in disclosure, that interest is balanced against any privacy interests in nondisclosure.

See Docket No. DE 09-009, Order No. 25,054 at p. 8, (Dec. 18, 2009); Docket No. DE 09-158, Order No. 25,059 at p. 12 (Dec. 31, 2009).

8. The Commission, using the *Union-Leader* and *Lambert* standards discussed above, has regularly granted confidentiality for information similar to the attached red confidential information. The Commission has held that, “If public disclosure of confidential, commercial or financial information would harm the competitive position of the person from whom the information was obtained, the balance would tend to tip in favor of nondisclosure.” Docket No. DE 06-107, Order 24,777 (July 12, 2007).
9. If the Confidential Documents are not provided with confidential treatment, such disclosure would detrimentally impact the Access Northeast project, Spectra and ICF (the “Parties”) in the marketplace now and in the future. The Parties are members of a highly competitive and active industry, which relies on highly technical analysis that while time consuming and expensive to create can be easily duplicated once it enters the public domain. Disclosure of the Confidential Documents would reveal specific confidential, commercial, and financial information, as well as intellectual property and related technical analysis. The Confidential Documents were developed at great expense and time, and their disclosure will harm the competitive position of the Access Northeast project, Spectra and ICF in the marketplace now and in the future, as well as their competitive position.
10. Consistent with the dictates of Puc § 203.08(b), as detailed above in Paragraph 3, Spectra has met its burden by: (1) referencing the relevant statutory and common law support (*see* Paragraphs 1 through 3 above); (2) providing a detailed statement of the harm (*see* Paragraph 9); and (3) now identifying the specific information contained that is deserving of a protective order, specifically Spectra requests confidential treatment related to the all data compiled in the Confidential Documents. The compilation of this data represents confidential commercial and financial information, the public release of which would cause harm to the Parties.

WHEREFORE, Spectra respectfully requests that the Commission grant confidential treatment of the Confidential Documents by issuance of a protective order as requested herein. In accordance with Puc 203.08(g) the confidential information should be labeled “Confidential,”

held in a secure location within the Commission's offices, and not disclosed to the public or any party other than the Commission staff without Spectra's consent.

Respectfully submitted this 31st day of July, 2015

SPECTRA ENERGY SERVICES, LP

By: /s/_____

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused the attached Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc §203.08 to be filed in hand and electronically to the Commission and electronically, or by U.S. Mail, first class, to the persons identified on the attached Service List in accordance with N.H. Admin. Code Rules PUC 203.11(a).

Date: July 31, 2015

_____/s/_____
Earl W. Phillips, Jr.

Docket #:

Printed: July 31, 2015

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:

DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.

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