

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 09-009

Unitil Energy Systems, Inc. (UES) Default Service

MEMORANDUM OF LAW

I. Preliminary Statement

During the hearing held in this proceeding, an issue of law arose concerning whether UES could lawfully withhold confidential information from a party to the proceeding.

II. Applicable Law

Pursuant to RSA 91-A:5, IV and N.H. Code Admin. Rules Puc § 203.08 certain confidential or financial information may be protected from disclosure to the public. But there is no provision of law or regulation that by which such information can be denied to a party pursuant to an appropriate protective order or confidentiality agreement.¹

The New Hampshire Supreme Court has held that that a party in a legal proceeding in New Hampshire is entitled to be “fully informed and have access to all information favorable to his side of the issue. This is true whether the issue is one raised by him or by his opponents and whether the evidence is in the possession of his opponent or someone else.” Scoutsas v. Citizens Ins. Co., 109 N.H. 386, 388 (1969). The NHPUC itself has ruled that “in order for that organization to meaningfully participate in the docket it should have access to the same information as does the Commission.” Order No. 23,986 (June 5, 2002) at 11.

III. Conclusion

UES, or any other electric utility must provide confidential information to a party to the proceeding, if that party is willing to abide by an appropriate protective order, is willing to execute a confidentiality agreement, or both.

¹ RSA 378:43 is only applicable to telephone utilities.

Respectfully submitted,
FREEDOM LOGISTICS LLC
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COMPANY, LLC

By its Attorneys

/s/ James T. Rodier

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Dated: March 19, 2009

Certification of Service

Pursuant to Rules Puc 203.02(2) and Puc 203.11, I have served copy of this memorandum on each person identified on the commission's service list for this docket.

/s/ James T. Rodier