

THE STATE OF NEW HAMPSHIRE  
before the  
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire  
Default Energy Service Rate

Docket No. DE 09-180

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S  
MOTION FOR PROTECTIVE ORDER RE: ACQUISITION OF RECS

Pursuant to RSA 91-A:5,(IV)(Supp.) and N.H. Code Admin. Rules Puc § 203.08, Public Service Company of New Hampshire ("PSNH" or the "Company") hereby requests protective treatment for the responses to a data request propounded by the Staff. The request asks for detailed information pertaining to PSNH's projected plans for acquiring Renewable Energy Certificates (RECs) including the terms of any contracts and plans already in place for purchasing RECs, using RECs generated by PSNH's eligible resources, and sales of RECs from PSNH's eligible resources. PSNH asserts that its REC procurement and sales plan is confidential commercial information potentially eligible for protection from public disclosure under RSA 91-A:5,(IV). PSNH also requests that service of the response not be required for the competitive/alternative power suppliers who have intervened in this proceeding: Freedom Logistics, LLC, Halifax-American Energy Company, LLC, TransCanada Power Marketing, Ltd., and the New England Power Generators Association, Inc. In support of its Motion for Protective Order, PSNH says the following:

1. The data request is as follows:

**NSTF-01 Q- STAFF-014**

**Question:**

Reference Attachment RAB-2, page 3, line 40. Please provide, in a format similar to the response to NSTF-01, Q-STAFF-002 in DE 08-113, the following information regarding PSNH's estimated costs of compliance with the NH RPS:

- a. Breakdown of the \$12.523 million by RPS class;

- b. For each class, supporting information as to whether and to what extent PSNH currently estimates it will be acquiring RECs, using RECs from its own facilities, or making alternative compliance payments;
- c. Details concerning any contracts PSNH has entered into to acquire RECs from other facilities (such details to include class, amount, price and duration); and
- d. For each of PSNH's qualified renewable resources, detailed information concerning how many RECs from that resource are under contract for sale during 2010 and future years, the contracted price(s), and in which state market(s) the RECs will be sold.

2. The Commission must use a balancing test in order to weigh the importance of keeping open the record of this proceeding with the harm from disclosure of confidential financial or competitive information. "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).

3. The limited benefits of disclosing the information outweigh the harm done by disclosing the information and the potential harm to the owners of the facilities from disclosure. Pricing terms with power suppliers and fuel suppliers have traditionally been kept confidential. *See, Re EnergyNorth Natural Gas, Inc. dba KeySpan Energy Delivery New England*, Docket No. DG 03-068, Order No. 24,167, 88 NH PUC 221 , 226 (2003). For the RECs already acquired under contract the same consideration for confidentiality attaches. The Commission has already afforded confidential treatment for the terms of REC purchase arrangements with Lempster Wind, LLC (Docket No. DE 08-077), Pinetree Power, Inc. and Pinetree Power-Tamworth Inc. (Docket DE 07-125).

4. Release of this information would put PSNH at a disadvantage with respect to negotiations in the future with suppliers of RECs. These contracts have been kept confidential to protect both parties. Fewer suppliers may want to negotiate future REC supply contracts if they assume that the information in the final contract will be made public. Fewer suppliers of RECs will mean a less competitive arena in which PSNH procures the increasing number of RECs the Company needs each year under RSA 362-F. A similar motion was granted in the previous Default Energy Service rate setting proceeding. Docket DE 08-113, Order No. 24,920 slip op. at 9 (December 12, 2008).

5. It has been customary practice to grant confidential treatment to confidential commercial information such as REC procurement and sales plans and to restrict dissemination to intervenors who are competitive suppliers. PSNH does not know what load responsibility the competitive or alternative suppliers have in this proceeding and what responsibility they may have to procure and retire RECs to comply with RSA 362-F. 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, 292 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 to restrict access to this information from the competitive and alternative suppliers in this proceeding. See, Secretarial Letter of November 4, 2009 limiting intervention to non-confidential material; RSA 541-A:32, III.

WHEREFORE PSNH respectfully requests the Commission issue an order preventing the public disclosure of the response to NSTF-01, Q-STAFF-014 and to order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

November 24 2009  
Date

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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.

November 24 2009  
Date

Gerald M. Eaton  
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