

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: NEWINGTON FUEL SUPPLY PRICES, TERMS AND
CONTRACTS; NEWINGTON OPERATING INFORMATION, AND; LEVITAN
PRICING INFORMATION AND STUDY FORMULAS AND EQUATIONS**

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 information contained in several data requests in the above-captioned matter. Specifically, the data responses provide details of fuel supply arrangements for Newington Station, confidential operating information with regard to Newington Station, and confidential pricing information regarding the Company's contract with Levitan & Associates, Inc. and formulas and equations from Levitan's CUO. PSNH considers all of the information that is the subject of this motion to be confidential commercial or financial information and thus seeks protection of it from public disclosure under RSA 91--A:5, IV.

In support of its Motion for Protective Order, PSNH says the following:

Newington Fuel Supply Prices, Terms and Contracts

1. During the course of this docket, the Company received three data requests from the Staff, all of which sought fuel price data for fuel used at Newington Station.

The data requests concerning the Newington fuel supply prices, terms and contracts are set forth below:

The data request LAI-MOD-006 SP 01 is as follows:

Question:

Follow-up question received from Staff on May 27, 2011: With regards to the response to LAI-MOD-01-6, Staff is not asking Levitan for standing or active RFO or No. 2 contracts here. Instead, Staff is looking for copies of the Conoco Phillips and Sprague Energy supply contracts.

The data request STAFF-03, Q-STAFF-005 is as follows:

Question:

Ref. Staff 2-1. In Staffs follow-up question, dated May 27, 2011, on the Company's response to Staff 2-1, Staff requested that the Company provide a copy of the most recent natural gas supply contract for Newington. The Company's response, dated June 2, 2011, however, only included a copy of a natural gas purchase order submitted by PSNH to Emera Energy Services Inc. Please provide the master purchase agreement between Emera and PSNH plus all attachments including those that specify the pricing of the commodity purchased from Emera. Please also provide copies of all:

- (i) confirmation notices sent by Emera regarding natural gas to be delivered to Newington in calendar year 2010; and
- (ii) invoices sent by Emera regarding natural gas delivered to Newington in calendar year 2010.

The data request STAFF-04, Q-STAFF-012 and its follow up are as follows:

Question:

Ref. LAI Rebuttal, page 24. Please provide all support for the assertion that the 2010 summer Newington Station basis spreads were unusually large.

January 23, 2012 follow up request from Staff: Please provide the Emera invoice data used to calculate the average monthly basis spreads and update that data through December 31, 2011.

2. In response to each of these requests, the Company produced information regarding the Company's purchase of fuel from Emera Energy Services Inc., and notified the Staff and parties that it considered this information confidential. The Company now seeks protective treatment for the information provided in response to the above requests because the

information is not made public by the Company and is maintained in confidence. Further, if the information were released, it would harm the Company's ability to obtain competitive pricing in the future.

3. RSA 91-A:5 IV permits an exemption from public disclosure for records which contain confidential, commercial or financial information. Before granting confidential treatment, the Commission uses 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 County 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. DG 08-048, Order No. 25,014, slip op. at 3, *cited in* Order No. 25,254 (June 14, 2011).

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).

4. Release of this fuel supply information would put PSNH at a disadvantage with respect to negotiations in the future with fuel suppliers. Pricing terms with power suppliers and fuel suppliers have traditionally been accorded

confidential treatment by the Commission. *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). All such information is maintained as confidential by the Company and is not otherwise disclosed.

5. As described below, PSNH has a privacy interest in not disclosing the terms of its fuel contracts with suppliers or the copies of those contracts. The text of the response and the attachments to STAFF-04, Q-STAFF012 would disclose PSNH's actual price of gas at Newington Station because the price spreads provided in these responses can be compared to the Dracut gas prices which are known. The public has an interest in these contracts as they form the basis of the fuel supply cost used at the station for which the continued unit operation study was performed. In order to know how the Commission evaluates PSNH's least cost planning, the public does not need to the prices and terms of supplier contracts. That information does not shed any light on the workings of government.
6. The limited benefits of disclosing the information outweigh the harm done by disclosing the information. With respect to the fuel supply contracts, PSNH's privacy interest is based on the mutual expectation of the parties' to the contract that its terms and conditions will be held confidential and not disclosed to the public. Suppliers may be reluctant to negotiate future supply contracts if they assume that the information in the final contract will be made public. Fewer suppliers would result in a less competitive arena in which PSNH procures fuel supplies. With decreased opportunities to negotiate, PSNH would have reduced bargaining power and would not be able to achieve the very best contracts for its customers. It is in the best interests of customers and the Company to protect this information. The public interest in disclosure is outweighed by the harm that would result

from disclosure of these contracts. A similar motion was granted in an earlier Default Energy Service rate setting proceeding and a recent reconciliation proceeding. Docket No. DE 10-257, Order No. 25,187, slip op. at 10 (December 28, 2010). Docket No. DE 11-094, Order No. 25,321, slip op. at 26 (January 21, 2012).

Newington Operating Information

7. The data requests concerning the Newington operating information are set forth below and variable O+M costs, cold start and hot start costs, strategies for gas scheduling flexibility during the heating season, all of which the Company does not publicly disclose:

OCA-01, Q-OCA-062

Question:

On page 186 of Appendix G Newington CUO Study, Section A.2. Approach is the sentence: "The CUO study is based on historical and projected financial and operating data provided by PSNH." Please provide a copy of the information provided by PSNH.

STAFF-02, Q-STAFF-023

Question:

Ref. LAI Rebuttal, page 28. Please provide the Newington-related hot start times, minimum run time, start costs, and heat rates included in the GE MAPS database underlying the CRA study. Please also provide the same data used by LAI to conduct both the initial and revised CUO studies.

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 these responses because competitors could use this information to their advantage in developing prices for competitive electric service. Providing competitive suppliers with access to Newington Station's heat rates, start up costs variable O+M costs and cold weather strategies would allow a competitive supplier inside information as to how to price supplemental supply. Energy Service customers of PSNH would in turn be harmed by disclosure because

the Company would not have access to similar information about competitors' plants or sources of supply, thereby creating an unfair advantage in the marketplace.

8. Clearly the harm from disclosure outweighs the need for public disclosure or providing this response to the public and 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. On July 7, 2011, PSNH filed a Motion for Protective with respect to Generator Start Up and Minimum Runs. The Commission has not ruled on that Motion; however, PSNH incorporates the arguments in that motion and above to support its request for protective treatment of these responses.

Levitan Pricing Information and Study Formulas and Equations

9. The Company also seeks protective treatment for certain pricing information relating to its contract with Levitan & Associates, Inc. and formulas and equations used by Levitan in its conduct of the CUO. The Commission previously granted protective treatment to this type of information in Order 25,234, which the Company believes should be extended to include the confidential information produced in response to other data requests.

10. Specifically, the Company seeks protective treatment for Levitan's contract pricing information produced in response to the following request:

Request OCA-02, Q-OCA-024

Question:

Attached to the Response to Staff 01-047 is a "Proposed Addendum to Determine the Real Option Value of the Newington Station" from Levitan to PSNH dated June 23, 2010.

- a. The letter references an Original Proposal dated April 26, 2010 and as second proposal of June 20, 2010. Please provide copies of those 2 proposals.

11. On April 8, 2011, PSNH filed a Motion for Protective Order Re: Consultant's Contract in which it requested protection of the pricing data in the Company's contract with Levitan & Associates. The Commission granted that motion in Order No. 25,234. Order No. 25,234. Slip op. at 3. Subsequently, PSNH provided copies of the two proposals requested in Q-OCA-024 while PSNH reserved its rights under Puc 203,08(d) to file a motion for protective order. Two pricing items were redacted from page 9 of the June 20, 2010 letter proposal. PSNH is hereby submitting unredacted copies of the June 20, 2010 proposal. PSNH believes these pricing terms should be protected under Order No. 25,234 as they are the same nature of pricing terms for the consultant's contract protected under that order.

12. In addition, the Company also seeks protective treatment for Levitan & Associates' proprietary formulas and equations that were produced in response to the following three data requests :

Request LAI-MOD01, Q-STAFF-012

Question:

Re Section 3 of Modeling System Overview: Fuels Price Short-term and Long-term Stochastic Parameters Statistical Procedure - Please provide an example of what you mean by the "short term daily mean-reversion rate" parameter.

Request LAI-MOD01, Q-STAFF-021

Question:

Re to Section 3 of Modeling System Overview: Fuels Price Short-term and Long-term Stochastic Parameters Statistical Procedure Please provide an example of what you mean by the “Long-run daily volatility rate” parameter.

Request LAI-MOD01, Q-STAFF-022

Question:

Re Section 6 of Modeling System Overview: Energy Hourly Prices Simulation Model

LAI states that “TOU by month energy prices in each scenario are dependent on the stochastic natural gas prices, forward energy and natural gas prices, and a SHR elasticity parameter, which plays the role of adjusting the base SHR down (up), depending on whether the statistical estimate of the elasticity is less (greater) than one.”

Please explain in detail (using a step-by-step approach) how stochastic natural gas prices, forward energy and natural gas prices, and a SHR elasticity parameter are used to develop the TOU monthly energy prices.

That is, describe all calculations and explain the purpose of the SHR elasticity parameter. In addition, explain in detail how hourly energy prices are calculated from TOU monthly energy prices using historical simulation.

13. Order No. 25,234 also accorded protective treatment to Levitan’s proprietary models and equations contained in the CUO. In that order, the Commission stated:

“We agree with the Company that the proprietary models and equations created by Levitan are commercial information in which a strong privacy interest resides. Further, competitive harm may befall Levitan if this modeling-related information and equations are disclosed. *See Union Leader Corp.*, 142 N.H. at 554.”[*Union Leader Corp. v. NH Housing Fin.Auth.*, 142 N.H. 540, 5 (1997)]
Order No. 25,234. Slip op. at 3.

14. The three responses to the above data requests contained Levitan’s equations and formulas. At the time PSNH responded to the request, it reserved its rights under Puc 203,08(d) to file a motion for protective order. Because the Commission granted protective treatment to this type of information in Order No. 25,234, the Company believes that same protection should extend to the responses to these requests.

Restricting Information from Competitive Suppliers

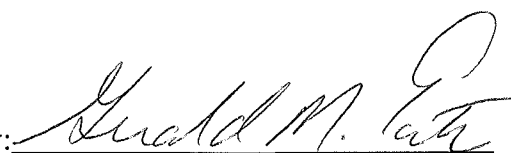
15. The Company is further requesting that the Commission restrict from dissemination to competitive suppliers all of the information that is the subject of this motion. It has been the Commission's practice in the past to grant protective treatment to confidential commercial information such as power supply and coal supply contracts and to restrict 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 competitive suppliers in this proceeding. See, RSA 541-A:32, III. The Commission has also restricted the disclosure of similar fuel supply contracts, fuel terms and confidential operational and revenue information from competitive supplier intervenors. Docket No. DE 10-121, Order No. 25, 167, slip op. at 6 (November 9, 2010).
16. There is no reason that the information here should be treated any differently. As explained above, it would create an unfair disadvantage to provide competitive suppliers with access to operating information about Newington Station. With regard to the Levitan study formulas and equations, these are highly proprietary trade secrets of Levitan and Associates and should not be disseminated to participants in the competitive supply market. The pricing information will be supplied to all parties.

WHEREFORE PSNH respectfully requests the Commission issue an order preventing the public disclosure of the confidential portion of responses as described above with respect to Newington fuel supply prices, terms and contracts, Newington operating information, and information regarding Levitan contract pricing and study formulas and equations and preventing dissemination of the confidential materials to the competitive supplier intervenors in this proceeding, TransCanada, Granite Ridge, NEPGA and FEL/HAEC, to allow dissemination to any non-competitive supplier intervenor who will execute a mutually agreeable nondisclosure agreement, and to order such further relief as may be just and equitable.

Respectfully submitted,
Public Service Company of New Hampshire

February 21, 2012
Date

By:



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.

February 21, 2012
Date

Gerald M. Eaton
Gerald M. Eaton