

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

Docket DE 11-184

**Joint Petition
for
Approval of Power Purchase and Sale Agreements
and
Settlement Agreement**

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

Pursuant to RSA 91-A:5, IV and N.H. Code Admin. Rules Puc §203.08, Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, DG Whitefield, LLC d/b/a Whitefield Power & Light Company, and Indeck Energy-Alexandria, L.L.C. (collectively the “Wood IPPs”), hereby request confidential treatment and the issuance of a protective order for certain confidential, commercial, and financial information contained in responses to Office of Consumer Advocate’s first set of data requests to the Joint Petitioners, request numbered 1-5. The information contained in the Wood IPPs’ responses to OCA 1-5 consists of wood fuel source, price, and quantity information for each of the five Wood IPPs having power purchase agreements for the first six months of 2011.

In support of this Motion for Confidential Treatment, the Wood IPPs say the following:

1. N.H. Code Admin. Rules 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.
2. Rule 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.

3. The information provided in data responses and for which the Wood IPPs seek confidential treatment is identified in the responses to OCA 1-5 filed herewith in the form prescribed by Rule Puc §201.04. The confidential information includes wood fuel source, quantity, and price information for each of the facilities.

4. The confidential information for which protection is sought is exempt from public disclosure under RSA 91-A:5, IV. RSA 91-A:5, IV exempts records pertaining to confidential, commercial, or financial information from disclosure under RSA 91-A:5, the “Right-to-Know Law.” RSA 91-A:5, IV; *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 553 (1997).¹

5. In determining whether information should be protected from public disclosure under RSA 91-A:5, IV and Rule Puc §203.08, the Commission uses the three-step analysis developed in *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005) and *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008). See, e.g., *Public Service Company of New Hampshire*, Order No. 25,158 (Oct. 15, 2010); *Unitil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (Sept. 22, 2009); and *Public Service Co. of New Hampshire*, Order No. 25,037 (Oct. 30, 2009).

6. This analysis requires (i) an evaluation of whether there is a privacy interest at stake that would be invaded by disclosure (ii) when a privacy interest is at stake, the public’s interest in disclosure is assessed, and (iii) when there is a public

¹ In *Union Leader Corp.* the court stated that:

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).

interest in disclosure, that interest is balanced against any privacy interests in nondisclosure. *See Id.*; *see also Unitil Energy Systems, Inc.*, Order No. 25,054 (December 18, 2009); *Public Service Company of New Hampshire*, Order No. 25,059 (December 31, 2009).

7. The Wood IPPs have a privacy interest in their wood source, quantity, and pricing information.

8. The public has only limited interest in the Wood IPPs' wood source, quantity, and pricing information.

9. The privacy interests of the Wood IPPs outweigh any interest that the public may have in disclosure. Because the information is recent and at a level of detail that would allow vendors and competitors to determine each facilities' demand and average wood fuel price, disclosure would detrimentally impact the competitive position of each Wood IPP in future wood purchases. This would be similar to publication of the initial wood price information in the PPAs, and on a more detailed and potentially harmful basis. Consequently, publication of the information sought to be protected here will place the Wood IPPs at a competitive disadvantage when seeking to actually secure wood fuel at the initial wood prices set forth in each PPA, which would have a negative impact on both the Wood IPPs and PSNH, as the increase in wood prices would be reflected in the payment provisions of the power purchase agreements.

By comparison, the public's interest in disclosure of wood source, quantity, and pricing information is slight in this instance. The power purchase agreements in this docket are of a limited duration and each of the power purchase agreements is for a relatively small amount of unit contingent energy. Consequently, the fuel price adjustments under the power purchase agreements have a minimal effect on the public. The limited duration of these contracts minimizes their effect on the public and therefore

lessens the public's interest in the information. At the same time, the short duration of the power purchase agreements places the Wood IPPs at greater competitive disadvantage in the negotiation of future wood pricing both during and after the short term of the agreements. As the Commission has reasoned in past cases, "[i]f 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." *Re: National Grid plc*, 92 NHPUC 279, 326 (2007).

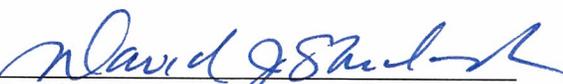
WHEREFORE, the Wood IPPs respectfully request that the Commission grant confidential treatment of the confidential, commercial, or financial information contained in their responses to Office of Consumer Advocate's data request numbered 1-5. In accordance with N.H. Code of Administrative Rules Puc 203.08(g), the unredacted data responses to OCA 1-5 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 and Office of Consumer Advocate without the consent of the Wood IPPs.

Respectfully submitted,

BRIDGEWATER POWER COMPANY, L.P.,
PINETREE POWER, INC.,
PINETREE POWER-TAMWORTH, INC.,
SPRINGFIELD POWER LLC,
DG WHITEFIELD, LLC d/b/a WHITEFIELD
POWER & LIGHT COMPANY, and
INDECK ENERGY-ALEXANDRIA, LLC

By Their Attorneys,

OLSON & GOULD, P.C.

By: 
David J. Shulock, Esq. (NH #10597)
Robert A. Olson, Esq. (NH #1933)

David K. Wiesner, Esq. (NH #6919)
5 Chenell Drive, Box 6
Concord, NH 03301
(603) 225-9716
dshulock@bowlaw.com
rolson@bowlaw.com
dwiesner@bowlaw.com

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: October 3, 2011



David J. Shulock, Esq.