

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Default Energy Service Rate for 2012

Docket No. DE 11-215

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

Pursuant to RSA 91-A:5,IV 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 response 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. In support of its Motion for Protective Order, PSNH says the following:

1. The data request is as follows:

NSTF-01 Q- STAFF-011

Question:

Regarding September 23, 2011 Filing. Reference Attachment RAB-2, page 3, line 40. Please provide, in a format similar to the response to STAFF-01, Q-STAFF-012 in DE 10-257, the following information regarding PSNH's estimated costs of compliance with the NH RPS:

- a. Breakdown of the \$14.796 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 2011 and future years, the contracted price(s), and in which state market(s) the RECs will be sold.

2. Before granting confidential treatment, the Commission must determine if there is a privacy interest of PSNH's to protect. Then the Commission determines if there is a public interest in disclosure. If both of these steps are met then the Commission will use a balancing test in order to weigh the importance of keeping the record public with the harm from disclosure of the material for which protection is requested. Docket No. DE 10-121, Order No. 25,167, slip op. at 3-4; DE 10-257, Order No. 25187, slip op. at 8, *citing, Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008).

3. PSNH has a privacy interest in protecting the terms of the Company's plans to acquire and sell RECs in 2012. Release of this information would put PSNH at a disadvantage with respect to negotiations in 2012 and 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. Disclosure of PSNH plans to acquire RECs and the estimated prices that PSNH expects to spend will allow REC suppliers to have a competitive advantage over PSNH when the time comes to contract for those REC supplies.

4. "Disclosure that informs the public of the conduct and activities of its government is in the public interest; otherwise disclosure is not warranted." Order No. 25,167, slip op. at 4. PSNH uses these costs to compute its estimated default service rate. "The public disclosure of these costs would allow for a detailed understanding of the various cost components

in ES rates.” Order No. 25,187 at 9. It is arguable, therefore, that there is some public interest in disclosure of the REC purchase plans; however, disclosure sheds little light on how the Commission conducts its activities.

5. 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).

6. 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 No. 07-125). A similar motion was granted in the previous Default Energy Service rate setting proceeding. Docket No. DE 10-257, Order No. 25,187, slip op. at 27 (December 29, 2010).

WHEREFORE PSNH respectfully requests the Commission issue an order preventing the public disclosure of the response to NSTF-01, Q-STAFF-012 and to order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

November 16, 2011
Date

By: Gerald M. Eaton
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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 16, 2011
Date

Gerald M. Eaton
Gerald M. Eaton

Witness: Frederick White
Request from: New Hampshire Public Utilities Commission Staff

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Response:

Please see the attached redacted response.

** The unredacted attachment is being filed under a Motion for Protective Order.