

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

**PETITION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
D/B/A EVERSOURCE ENERGY  
FOR APPROVAL OF A POWER PURCHASE AGREEMENT**

**Docket No. DE 16-XXX**

**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)(Supp.) and N.H. Code Admin. Rules Puc § 203.08, Public Service Company of New Hampshire ("PSNH" or the "Company") hereby requests confidential treatment and the issuance of a protective order for certain confidential, commercial, or financial information contained in the Power Purchase Agreement ("PPA") entered into by and between PSNH and Hydro Renewable Energy Inc. ("HRE") dated June 17, 2016, and in the supporting testimony of Mr. James G. Daly. The information for which confidential treatment and protection is sought is limited to the pricing data.

In support of this Motion for Confidential Treatment, PSNH says the following:

1. RSA 374:57 provides a process for electric utilities to enter into agreements for the purchase of generating capacity, transmission capacity or energy.
2. 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.
3. 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.

4. On June 17, 2016, PSNH entered into a Power Purchase Agreement (“PPA”) with Hydro Renewable Energy Inc. (“HRE”), a subsidiary of Hydro-Québec, for the purchase of approximately 10 per cent of the energy that is proposed to be delivered to PSNH’s Deerfield Substation over the Northern Pass Transmission line.

5. The PPA was the result of protracted and detailed confidential negotiations. The PPA provides that the terms of that agreement are confidential and contains a confidentiality provision at Article 15.10. PSNH’s ability to enter into economic contracts can only be assured if negotiating partners are confident that their proposals and pricing remain confidential and do not become available, either directly or indirectly, to their competitors. The detailed pricing information contained in the PPA would not have been provided absent the assurance that the information would not be disclosed to the public.

6. If the PPA’s pricing provisions are not provided with confidential treatment, such disclosure would detrimentally impact both PSNH’s ability to attract negotiating partners in the future, as well as HRE’s competitive position in the marketplace. Under the PPA, HRE agrees to sell to PSNH approximately 10% of the energy that will be delivered via the Northern Pass Transmission line. The remaining 90% of the energy will be sold in the competitive marketplace. HRE would be competitively harmed in its efforts to market that remaining 90% of its product if the economic pricing terms of the PPA were revealed.

7. RSA Chapter 91-A is commonly referred to as the “Right-to-Know Law.” The Right-to-Know Law provides each citizen with the right to inspect government records in the possession of the Commission. However, under RSA 91-A:5, certain government records are exempted from the disclosure requirements of RSA Chapter 91-A. In particular, RSA 91-A:5, IV exempts from disclosure records pertaining to confidential, commercial, or financial information.

8. The New Hampshire Supreme Court has had the opportunity to discuss the requirements of the Right-to-Know Law on several occasions. In *Professional Firefighters of New Hampshire v. Local Government Center, Inc.*, 2010 WL 323119, 6 (N.H.) (N.H., January 29, 2010), the Court noted:

“The Right-to-Know Law does not guarantee the public an unfettered right of access to all governmental workings, as evidenced by the statutory exceptions and exemptions.” See also, *Goode v. New Hampshire Office of Legislative Budget Assistant*, 148 N.H. 551, 553 (2002), and *Brent v. Paquette*, 132 N.H. 415, 426, (1989) (“[T]he Right-to-Know Law guarantees every citizen the right to inspect all public records except as otherwise prohibited by statute or RSA 91-A:5.” (quotation omitted)).

9. The Court also opined on the confidential, commercial, or financial information exemption of the Right-to-Know Law in *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997), a case cited by the Commission dozens of times. In its decision, the Court noted:

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).

142 N.H. at 553.

The Court also noted:

To best effectuate the purposes of our Right-to-Know Law, whether information is “confidential” must be determined objectively, and not based on the subjective expectations of the party generating it. “To determine whether [records] ... are exempt as confidential, the benefits of disclosure to the public must be weighed against the benefits of non-disclosure to the government.” *Chambers v. Gregg*, 135 N.H. 478, 481 (1992). We find instructive the standard test employed by the federal courts: To show that information is sufficiently “confidential” to justify nondisclosure, the party resisting disclosure must prove that disclosure “is likely: (1) to impair the [State’s] ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *National Parks and Conservation Ass’n v. Kleppe*, 547 F.2d 673, 677-78, (D.C.Cir.1976) (quotations omitted) (*National Parks II*).

*Id.* at 553-554 (internal citations omitted).

10. In determining whether commercial or financial information should be deemed confidential and private, the Commission has followed *Union-Leader* as well as the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County*

*Convention*, 157 N.H. 375, 382 (2008). The *Lambert* analysis requires: i) 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; ii) when a privacy interest is at stake, the public's interest in disclosure is assessed; and, iii) when there is a public interest in disclosure, that interest is balanced against any privacy interests in nondisclosure. See *Unitil Energy Systems, Inc.*, Order No. 25,054, Docket No. DE 09-009 (December 18, 2009); *Public Service Company of New Hampshire*, Order No. 25,059, Docket No. DE 09-158 (December 31, 2009).

11. The Commission, using the *Union-Leader* and *Lambert* standards discussed above, has regularly granted confidentiality for pricing information similar to that contained in the PPA. For example:

- a. “If 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 non- disclosure.” *Re National Grid plc*, 92 NHPUC 279, 326 (2007) (granting confidential treatment for information regarding system upgrades and capacity contain information that, if publicly disclosed, would likely harm its competitive interests and the interests of ratepayers who would ultimately bear the burden of increased contract costs resulting from disclosure);
- b. “Inasmuch as disclosure in this instance could negatively affect customers, we do not find the public's interest in review of the financial, commercially sensitive information sufficient to outweigh the interest that National Grid and its bidders have in maintaining confidentiality of such information.” *Re Granite State Electric Company dba National Grid*, 92 NHPUC 215, 219 (2007) (granting a protective order for information received by National Grid as part of a competitive RFP process including “a brief discussion of the selection of the winning bidder, a bidder key that identifies the suppliers who participated in the RFP, the comparative energy and capacity prices received from the bidders (including the estimated total cost according to the evaluation loads provided with the RFP), a ranking of the transactions offered by each bidder in terms of financial security (including consideration of reasonable extension of credit to

National Grid and the creditworthiness of the supplier and the credit assurance offered), the information provided by each bidder in the proposal submission forms, and, a redlined version of the negotiated purchase and sale agreement.);

- c. Regarding a series of contracts provided by PSNH: “The information in the documents is financially or commercially sensitive in the sense that its public disclosure would reveal information that could place Ensio Resources at a competitive disadvantage relative to other firms that purchase end products of coal-burning processes and PSNH at a competitive disadvantage in future negotiations with end-product purchasers.” *Re Public Service Company of New Hampshire*, 84 NHPUC 484, 485 (1999);
- d. Granting confidential treatment for bidder information obtained during the auction sale of the Seabrook Nuclear Generating Station: “Disclosure could result in competitive damage to bidders, and also impair the ability of the state to obtain such information in the future. Not only do we believe the information is commercially sensitive, we also believe that public disclosure of bids, bid analyses, financial assessments, and data related to the auction would chill future auction transactions, thereby limiting the results that might otherwise have been achieved.” *Re North Atlantic Energy Corporation*, 87 NHPUC 396, 399 (2002).
- e. Confidential treatment was granted for similar confidential, commercial, or financial information contained in the Power Purchase Agreement and Renewable Energy Certificate Option Agreement entered into between PSNH and Lempster Wind, LLC in Docket No. DE 08-077. *See*, Order No. 24,965, May 1, 2009, at 2.

12. Confidential treatment of the pricing terms of the PPA would also be consistent with the policies espoused in RSA Chapter 374-F, the Electric Utility Restructuring act. RSA 374-F:1, I states in part that “the development of competitive markets for wholesale and retail electricity services are key elements in a restructured industry... .” RSA 374-F:1, II references the State Constitution’s directive at part II, article 83, for protection of “Free and fair competition.” To protect HRE’s ability to participate in the free and fair competitive electricity marketplace for 90% of its product, the pricing provisions of its agreement to sell 10% of its product to PSNH are entitled to confidential treatment.

13. Since for ratemaking treatment the PPA will be dealt with via PSNH's stranded cost recovery charge, the impacts of the PPA, be they positive or negative, will not adversely impact the competitive electricity marketplace, nor the ability of competitive electricity power suppliers to compete for retail customers or to respond to RFP's to provide default service to PSNH's customers following generation divestiture. Hence, there is no basis for these competitors of HRE to have access to the confidential pricing provisions of the PPA.

**WHEREFORE**, PSNH respectfully requests that the Commission grant confidential treatment of the PPA's pricing provisions which comprise confidential, commercial, or financial information by issuance of a protective order as requested herein. In accordance with N.H. Code of Administrative Rules Puc 203.08(g) the unredacted PPA and the unredacted testimony of Mr. James G. Daly 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 without PSNH's and HRE's consent.

Respectfully submitted this 28<sup>th</sup> day of June, 2016.

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
d/b/a EVERSOURCE ENERGY**

By:  \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I certify that on this date the attached Petition and Motion for Confidential Treatment were provided to the Office of Consumer Advocate per RSA 363:28, VI and Puc 203.02.

June 28, 2016



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