

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Re: Public Service Company of New Hampshire

DE 08-77

Objection to PSNH's Motion to Compel

Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively "Constellation") hereby object to Public Service Company of New Hampshire's Motion to Compel and state as follows:

1. On November 5, 2008, Public Service Company of New Hampshire ("PSNH") filed a Motion to Compel Constellation to respond more fully to PSNH's data requests 12, 14, 20 and 30(b). For the reasons set forth below, the information sought by PSNH in these data requests is not reasonably calculated to lead to the discovery of admissible evidence, and therefore production of the requested information should not be compelled by the Commission. In addition, particularly in light of the fact that in this very docket PSNH has refused to provide information to Constellation on the basis that such information was confidential, Constellation should not itself be compelled to provide highly sensitive confidential commercial information in response to PSNH's discovery requests, particularly when the information lacks probative value.

2. With regard to Request No. 12, PSNH seeks information concerning confidential prices paid by Constellation in past transactions for renewable energy certificates ("RECs"). PSNH has failed to explain how transactions undertaken at a different point in time would be indicative of the pricing that PSNH should pay for RECs purchased from the Lempster project. Moreover, as Constellation has explained in

response to other data requests from PSNH, Constellation does not procure RECs specifically for use in New Hampshire, and therefore it is not possible to respond to PSNH's data request. (*See, e.g.*, Constellation's response to PSNH Request No. 14, which is set forth on page 2 of PSNH's motion.) PSNH's argument that Constellation has previously stated that its participation in this docket would assist the Commission simply does not justify its becoming a target for PSNH to seek highly confidential information of little or no probative value.

3. With regard to PSNH's Request No. 14, it is unclear what information PSNH seeks to compel Constellation to produce. Constellation responded to the data request in full, except that consistent with its response to Request No. 12, it did not provide the prices of RECs it has purchased. The response fully explains why the question cannot be answered in the manner that PSNH wishes.

4. PSNH's Request No. 20 seeks Constellation's analysis and bid preparation information in response to RFPs on which it has bid. Again, such information would not be of probative value in this proceeding because the timing and circumstances of the transactions that PSNH has inquired about differ from the transaction at issue in this proceeding. Moreover, PSNH, not Constellation, bears the burden of demonstrating that it has procured power and RECs in a manner that yielded a price that is least cost after taking into account all other appropriate factors.

5. PSNH's Request No. 30(b) also seeks pricing information from transactions entered into by Constellation—in this case bilateral power purchase prices. Again, the prices paid by Constellation in the referenced transactions are not relevant to this proceeding for the reasons explained above, and PSNH's attempt to use them as a

reference point merely seeks to direct attention away from PSNH's own failure to provide a suitable reference point or method for determining that the prices it has agreed to pay are reasonable.

6. As Constellation has previously stated in this proceeding, the Public Utilities Commission is a public forum in which interested parties have a right to participate and be heard. If intervention in a proceeding of this nature is allowed to be used as a basis to open competitive suppliers to such invasive discovery, the result will be that the already meager level of supplier participation in Commission proceedings is likely to drop to zero. (Notably, this is the very basis on which PSNH premised its earlier objection to Constellation's request that Lempster Wind, LLC be made a party to this proceeding.) Before requiring competitive suppliers to produce highly sensitive confidential commercial information, the Commission should determine that such information is in fact relevant to the proceeding and that the chilling effect that requiring its production would have on intervention is outweighed by the probative value of the information being sought.

7. It is particularly noteworthy that PSNH itself has refused to provide confidential information in response to a number of data requests from Constellation, even when Constellation offered to accept redacted responses (with unredacted responses being provided to the Commission staff and Office of Consumer Advocate). It is ironic and perhaps telling of PSNH's true motives that it now proposes that just such a process be imposed on Constellation. Constellation is not a public utility subject to price regulation and it does not bear the burden of proof in this docket. Rather, as Constellation has sought to argue in this proceeding, PSNH bears the burden of proof and

has failed to provide a sufficient point of comparison to determine that the prices it has agreed to pay are in the public interest. PSNH's failure to provide such information should not be allowed to become the basis for it to now seek comparative price information from the sole intervenor in this docket.

7. PSNH's tactics in dealing with Constellation before this Commission have frequently been designed to attempt to ensure that Constellation will limit or cease its intervention in proceedings at this Commission. As the Commission has done in the past, it should wield its power to compel discovery carefully in order to ensure that the public interest is served and to ensure that its procedures are not abused.

WHEREFORE, Constellation respectfully requests that the Commission deny PSNH's Motion to Compel.

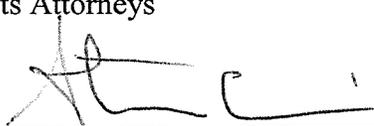
Respectfully submitted,

CONSTELLATION NEWENERGY, INC.  
AND  
CONSTELLATION ENERGY  
COMMODITIESGROUP, INC.

By Its Attorneys

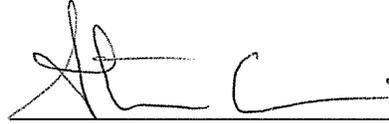
November 14, 2008

By:

  
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CERTIFICATE OF SERVICE

I hereby certify that I have served this Objection on all persons on the service list this 14 day of November, 2008.



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Steven V. Camerino