

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Reconciliation of Energy Service Cost and Stranded Charge Costs for 2010

Docket No. DE 11-094

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
MOTION FOR PROTECTIVE ORDER RE: FUEL SUPPLY CONTRACTS

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 the attachments to a response to a data request propounded by the Staff. The responses contain fuel supply in effect during the historical 2010 period. In support of its Motion for Protective Order, PSNH says the following:

1. The data request is as follows:

NSTF-01 Q- STAFF-032

Question:

Reference Baumann testimony, Attachment RAB-4. Please provide copies of all coal, natural gas and oil supply contracts in effect during 2010.

The attachments to Response No. 32 are eight coal supply contracts, two natural gas supply contract documents and three distillate fuel oil contracts. PSNH claims these contracts are confidential financial information and should be eligible for protection from public disclosure under RSA 91-A:5, IV.

2. Before granting confidential treatment, the Commission must use 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).

3. Release of this information would put PSNH at a disadvantage with respect to negotiations in the future with fuel suppliers. Traditionally these contracts have been kept confidential to protect both parties. 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). All such information is maintained as confidential by the Company and is not otherwise disclosed.

4. The public has an interest in these contracts as they form the basis of the fuel supply costs for power produced by PSNH generating stations and delivered to default energy service customers in 2010. The Commission considers the propriety of entering into these contracts and whether fuel for generation was purchased in a prudent manner.

5. With respect to the fuel supply contracts, PSNH asserts that both parties to the contract expect the details of the contract to be held confidential and not disclosed to the public. Suppliers may not want to negotiate future supply contracts if they assume that the information in the final contract will be made public. Fewer suppliers means a less competitive arena in which PSNH procures fuel supplies. With decreased opportunities to negotiate, PSNH will have reduced bargaining power, PSNH and cannot 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 the previous Default Energy Service rate setting proceeding. Docket No. DE 10-257, Order No. 25,187, slip op. at 10 (December 28, 2010).

WHEREFORE PSNH respectfully requests the Commission issue an order preventing the public disclosure of the responses to NSTF-01, Q-STAFF-032 and to order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

July 12, 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 hand delivered or sent by First Class U.S. Mail, postage prepaid, to the persons listed on the attached cover letter.

July 12 2011
Date

Gerald M. Eaton
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