

January 13, 2014

PUBLIC UTILITIES COMMISSION
Investigation into Reliability of Electric
Service in Northern Maine

ORDER DENYING MOTION
FOR PROTECTIVE ORDER

I. Introduction

For the reasons discussed below, the Motion for Protective Order filed by Maine Public Service Company (MPS) on December 27, 2013 is denied. Temporary protection is provided to information provided by Holdings, LLC (Loring) to MPS on a confidential basis.

II. Background

On December 27, 2013, Maine Public Service company (MPS) filed a motion, pursuant to 35-A M.R.S. § 1311-A and Maine Rule of Civil Procedure 26(c).

The following parties filed timely oppositions to MPS's motion:

- Houlton Water Company
- Eastern Maine Electric Cooperative (EMEC)
- Van Buren Light & Power Company
- OPA
- Central Maine Power Company (CMP)
- Maine Gen Lead LLC (Maine Gen Lead)
- New Hampshire Transmission LLC (NHT)
- EDP Renewables North America LLC (EDPRNA)
- ReEnergy Biomass V, LLC (ReEnergy)

On January 9, 2014, the Commission held a conference of counsel to hear arguments on the proposed motion. The above-listed parties participated in the conference of counsel. Northern Maine Independent System Administrator (NMISA) and New Brunswick Power Corporation also attended the conference.

III. Positions of the Parties

MPS requests the protection of MPS's "analysis and cost estimates of the potential solutions to the reliability issues in Northern Maine and the comparison of options to (a) secure in-region generation through long term contracts; (b) strengthen transmission ties to New Brunswick and (c) connect Maine Public directly to the ISO-NE Transmission Grid." MPS claims that its cost estimates and economic data relating to these options "if revealed would give other transmission owners, marketers, and other market participants, an undue advantage in the northern Maine market by allowing them to artificially compete against other projects by knowing Maine Public's analysis of the cost structure of various alternatives." MPS also asserts that the information it claims is Proprietary Business Information "could be used for bidding purposes in future standard offer Request for Proposals." MPS asserts that "the release of the Proprietary Business Information to other transmission owners, marketers and market participants would harm Maine Public customers, who benefit from competitive proposals for supply and/or solutions to the reliability issues." Finally MPS asserts that information provided to it by Loring was supplied to it on a confidential basis and therefore should be included in protected Proprietary Business Information.

MPS proposes to provide the information it has identified as Proprietary Business Information only to the Commission, the Office of the Public Advocate (OPA) and the

Northern Maine Independent system Administrator and their counsel and consultants. MPS states that excluding other parties in this case is necessary given the “particular sensitivity” of the information it has identified as Proprietary Business Information “and the fact that several of the parties are market participants.”

Parties opposing the motion contend that the motion is too broad in simply referencing cost analysis, the type of material described as confidential information is not information that warrants protection, MPS does not make a showing of harm, and denying access to the parties is inconsistent with Maine statute, and would prevent the parties from meaningfully participating in the case.

IV. Discussion and Decision

Section 1311-A pertains to “confidential or proprietary information, trade secrets, or similar matters” as provided by Me. R.Civ.P. 26(c). 35-A M.R.S. § 1311 (1)(A). In granting protective orders pursuant to Section 1311-A, the Commission balances “the need to keep the information confidential with the policies of conducting its proceedings in an open and fair manner” *Id.* 1311-A(1)(B). The party requesting the issuance of a protective order bears the burden of convincing the Commission that a need for the order exists. *Id.* § 1311-A(1)(C).

MPS has not met its burden of demonstrating that cost analysis regarding possible solutions to reliability issues in Northern Maine is the type of information that should be subject to a protective order. MPS could not point to any Certificate of Public Convenience and Necessity (CPCN) proceeding in which such analyses had been determined to be proprietary business information. Indeed, this information is the kind of information that is typically developed in a CPCN proceeding in order for the

Commission to evaluate both the need for the project and whether the proposed project is the most cost effective solution. While MPS stated in oral argument that balancing the public interest in keeping the information available and the possible harm in not providing the requested protection militates in favor of protecting the information and preventing its disclosure to most of the parties in the proceeding (those who may provide proposals in the proceeding), there must first be a showing that the material requested is of a type that fits within the framework of section 1311-A of Title 35-A , *i.e.*, the information sought to be protected must qualify as proprietary business information, trade secrets, or similar matters. Here, MPS's assertions that the cost analysis is like bid information fails to meet its burden of showing that cost analysis and assumptions underlying that analysis is proprietary business information or trade secrets. In this regard, neither of the protective orders cited by MPS involved protection of this type of information. *cf Bangor Hydro Electric Co., Investigation into Bangor Hydro's Stranded Cost Revenue Requirements and Rates*, Docket No. 2010-377 Protective Order No. 2 (protecting audited financial statements provided confidentially to BHE); *Bangor Hydro Electric co., Maine Public Service Co. Maine Electric Power Co., Inc., Chester SVC Partnership, Request for Approval of Reorganization*, Docket No. 2010-89, Protective Order No. 1 (Proprietary Business Information) (Me. PUC April 15, 2010) (protecting information relating to suppliers, customers, insurance policies, employee contracts, potential claims and liabilities and settlement agreements) In fact, when parties were questioned about whether they would disclose their project cost information, parties indicated that they do not plan to seek protection of such information. Thus, MPS seeks to keep MPS's cost analysis of alternative projects from the proponents of those

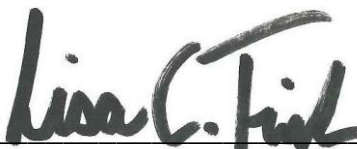
projects. The Examiners conclude that the cost and project analysis that MPS seeks to protect does not constitute Proprietary Business Information or Trade Secrets.

Accordingly, such information should remain available not only to the parties in this proceeding but to the public.

MPS also seeks protection for information supplied to it on a confidential basis by Loring. While it is not clear at this time exactly what information was provided by Loring, the Examiners are aware that Loring will seek to file a protective order in this case and that a protective order was in place for certain Loring information in Docket No. 2012-504. Thus, protecting, on a temporary basis, information confidentially supplied to MPS by Loring will allow Loring to make its case for protection. Accordingly, Temporary Protective Order No. 4 will be issued *solely* with respect to the information in MPS's draft plan relating to Loring and *solely* on a temporary basis. This information will be available to all parties in the proceeding in accordance with the terms of the Temporary Protective Order No. 4. MPS has not demonstrated that it is appropriate to keep this information from other parties in the proceeding. As is customary, MPS may require the parties to file a non-disclosure agreement.

Dated at Hallowell this 14th day of January 2014

BY ORDER OF THE HEARING EXAMINERS



Lisa C. Fink



Mitchell Tannenbaum