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12/31/2012*

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

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NSTAR Electric Company  
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D.P.U. 11-05; 11-06  
& 11-07

**MOTION OF NSTAR ELECTRIC COMPANY FOR PROTECTIVE  
TREATMENT OF CONFIDENTIAL INFORMATION**

Now comes NSTAR Electric Company (the "Company") and hereby requests that the Department of Public Utilities (the "Department") in accordance with G.L. c. 25, § 5D and 220 CMR § 1.04(5)(e) grant protection from public disclosure of certain confidential, sensitive and proprietary information submitted in this proceeding. Specifically, the Company requests that the Department protect from public disclosure information contained in Attachment (a) to the Company's response to Record Request CLC-NSTAR-1. As discussed below, the Confidential Attachment contains proprietary information about the pricing and terms of proposals submitted by third parties in response to a competitive solicitation that, if released publicly, could harm the competitive business position of the Company, current and future bidders, the contract counterparties and the Company's customers.

**I. LEGAL STANDARD**

The Department is authorized to protect from public disclosure "trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings." G.L. c. 25, § 5D. The Department has developed a three-part standard for assessing requests for protective treatment submitted pursuant to c. 25, § 5D.

First, the information for which protection from disclosure is sought must constitute "trade secrets, [or] confidential, competitively sensitive or other proprietary information." Second, the party seeking protection from disclosure must overcome the statutory presumption that the public is benefited by disclosure of that information by "proving" the need for non-disclosure. Finally, the Department will protect only so much of the information as is necessary to meet the established need. See, e.g., Western Massachusetts Electric Company, D.T.E. 99-56 (1999); Dispatch Communications of New England d/b/a Nextel Communications, Inc., D.P.U. 95-59-B/95-80/95-112/96-13, September 2, 1997 Procedural Order. Appropriate considerations with respect to the public interest issue include an assessment of the interests at stake, the likely harm that would result from public disclosure of information, and the public policy implications of such disclosure. See, e.g., Berkshire Gas Company, D.P.U. 93-187/188/189/190 (1994); Boston Gas Company, D.P.U. 92-259 (1993), Essex County Gas Company, D.P.U. 96-105 (1996).

## **II. BASIS FOR CONFIDENTIALITY**

Record Request CLC-1 asks the Company to calculate the difference between the contract prices for RECs and the forecast market prices prepared by the Company's Consultant, Levitan Associates. Both sets of prices, however, should be protected by the Department and remain confidential because the price data in the Attachment contains competitively sensitive bid responses and proprietary forecast information. The contract price information was received by the Company in confidence as a result of a competitive solicitation of proposals for long-term renewable energy generation pursuant to St. 2008,

c. 169, § 83; and (2) the market price forecast information was prepared for the Company by its outside Consultant.

**The Department Should Protect Bid Terms Received and Reviewed**

The Department should protect the bid information received by the Company as result of its Request for Proposals (“RFP”) relating to these proceedings and the Company’s analysis of those bids. The Confidential Attachment provides bid prices that were obtained by the Company in confidence. It is important that the above-referenced bid-related information and terms be held confidential because its disclosure could harm financially the parties that participated in the RFP process, as well as the interests of the Company’s customers in other competitive solicitations. The Company has treated the names of bidders, bid information and bid analysis as confidential throughout the RFP process. This information has been tightly controlled and has not been distributed outside of the Company or the Company’s counsel and jurisdictional regulatory agencies that have executed non-disclosure agreements with the Company. All bidders were told that the RFP process would be conducted in a highly confidential manner. The process was designed this way to encourage participation, promote competition in the bidding process, and maximize the value of the bids received. Any disclosure now could significantly damage the RFP process.

Moreover, if the contract price terms or the Consultant’s market price forecast are disclosed, the effectiveness and competitiveness of future competitive solicitations for renewable generation will be harmed substantially. If the bid information or forecast market prices in Confidential Attachment (a) is released, it may make bidders more reluctant to submit bids to the extent they wish to submit bids confidentially, or may

inflate bids that might otherwise be submitted based on a respondent's review of the Company's bid information received to date and market forecast information. Thus, the release of either the contract price or the forecast market price information at this time would potentially prejudice the future RFP process for renewable generation and ultimately harm the Company's customers.

The Department has protected bid information from public disclosure historically, because the public release of terms discloses the very types of information that the Department has previously and consistently held to be confidential. See, e.g., Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 10-54, Hearing Officer Ruling dated July 15, 2010 at 8 (awarding Protected Treatment to Companies' Renewable energy bids and terms); NSTAR Electric Company, D.T.E. 04—60 (March 14, 2005 Hearing Officer Memorandum); see also NSTAR Electric Company, D.T.E. 07-64 (November 19, 2007 Hearing Officer Memorandum). The Department has recognized that release of bid information, in particular, would seriously undermine the Company's negotiating position in the market, and thus, jeopardize the ability of the Company to ensure that customers are being served by the lowest cost option. See, e.g., Western Massachusetts Electric Company, D.T.E. 99-101, at 3 (2002), citing Boston Edison Company, D.T.E. 99-16 (1999); Western Massachusetts Electric Company, D.T.E. 99-56 (1999). See also Canal Electric Company/Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 02-34 (Tr. A at 19 (June 12, 2002)) and Cambridge Electric Light Company, D.T.E. 01-94 (May 9, 2002 Approval by the Department of Amended Motion of Cambridge Electric Light Company for a Protective

Order). Accordingly, the Department should protect the bid information found in the Confidential Attachment from the public record.

### III. CONCLUSION

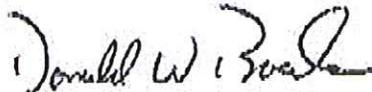
**WHEREFORE**, for the reasons stated above, the Company respectfully requests that the Department grant its motion to protect from public disclosure confidential, competitively sensitive and proprietary information contained in Confidential Attachment (a) to Record Request CLC-NSTAR-1. To the Company's knowledge, information in the Confidential Attachment is not otherwise available in the public domain.

The Company proposes that this information be protected from public disclosure for a period of three years, consistent with recent Department practice.

Respectfully submitted,

**NSTAR ELECTRIC COMPANY**

By its attorneys,



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Dated: June 21, 2011

