

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2008-255

August \_\_, 2008

CENTRAL MAINE POWER COMPANY and ) PROTECTIVE ORDER NO. 3  
PUBLIC SERVICE OF NEW HAMPSHIRE )  
Request for Certificate of Public Convenience )  
and Necessity for the Maine Power Reliability )  
Program Consisting of the Construction of ) Information Related to Transmission  
Approximately 350 Miles of 345 kV and 115 kV ) Siting  
Transmission Lines (“MPRP”) )

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On July 1, 2008, Central Maine Power Company (“CMP”) and Public Service of New Hampshire (“PSNH”) (collectively, “Petitioners”) filed a Request for Certificate of Public Convenience and Necessity to Build a 345 kV Transmission Line between Orrington, Maine and Newington, New Hampshire. Petitioners anticipate that certain confidential business information relating to the siting of the proposed transmission lines and rights of way for those lines will be requested during subsequent discovery and request that a protective scheme be implemented for this data.

Petitioners maintain that such confidential transmission siting and right of way information constitutes trade secrets of Petitioners and that it has value to Petitioners for which Petitioners have made significant investments. Petitioners further maintain that this information also has value to individuals and entities doing business or seeking to do business with Petitioners, and to potential business competitors who may seek to develop other projects on Petitioners’ rights of way, and that its release would be damaging to Petitioners’ interests and those of their customers. In particular, lack of protection of this information would likely create a competitive economic advantage to individuals and entities negotiating in the future with Petitioners concerning the transmission line rights of way (hereinafter “Abutters”) and companies who may seek to develop competing transmission projects and/or other projects such as pipelines using Petitioners’ rights of way, to the detriment of Petitioners and their customers (hereinafter “Business Competitors”). Section 1311-B(1) of Title 35-A of the Maine Revised Statutes grants the Commission the authority to issue protective orders to protect the interests of parties in confidential or proprietary information, trade secrets, or similar matters as provided in the Maine Rules of Civil Procedure, Rule 26(c) and Maine Rule of Evidence 502. The Commission has been sensitive to those concerns. *See, e.g.,* Protective Order No. 1 in *Re: Application for Approval of Affiliated Interest Transaction with MaineCom Services*, issued in Docket No. 2007-621 (protecting pricing information for transactions involving CMP’s rights-of-way and easements because disclosure would harm CMP’s ability to negotiate future lease agreements); Protective Order No. 2 in *Bangor Hydro-Electric Company, Request for Approval of Affiliated Interest Transaction Regarding Property Adjacent to Orrington Substation*, issued in Docket Nos. 2000-677 and 2006-629 (protecting the confidentiality of easement and right-of-way agreements); Protective Order No. 1 in *Re: Investigation of Bangor Gas Company LLC’s Cost of Gas Hedging Activities and Fixed Price Option*, issued in Docket No. 2008-120 (protecting the confidentiality of information which, “if used by a competitor to gain competitive advantage, could result in harm to the Company and its ratepayers.”).

Petitioners agree to produce confidential transmission siting and right of way information and documents in this proceeding on the condition that a protective scheme be implemented similar to that used in the above-cited proceedings for that kind of information. Any party at any time can move for a finding that material subject to protection should no longer be protected or that the other party should be provided access to the protected information pursuant to protective provisions. Unless such a motion is granted, however, use of the allegedly confidential materials will be restricted by the terms of this Protective Order No. 3.

In order to expedite the provision of this information to the Commission and subject to reconsideration in light of arguments by any intervenors, the Examiners conclude that the limited and revocable protection requested by Petitioners is warranted under 35-A M.R.S. § 1311-A and Rule 26(c) of the Maine Rules of Civil Procedure.

Accordingly, it is

**O R D E R E D**

1. That confidential transmission siting and right of way information, including:
  - Information regarding the acquisition of real estate to be acquired for the proposed transmission lines and rights of way;
  - Information regarding negotiations and pricing relating to the siting of the proposed transmission lines and rights of way; and
  - Information regarding negotiations, pricing and agreements regarding the use of Petitioners' rights-of-way including, without limitation, all easements and other real property interests related to the proposed transmission lines and rights of way

shall be considered "Designated Confidential Information" for purposes of this Order and, until this Order is modified, access to Designated Confidential Information shall be limited as described in Paragraph 4 below.

2. That all Designated Confidential Information shall, unless removed from the coverage of this Order as provided in Paragraph 3 below, be and remain confidential. Designated Confidential Information shall not be disclosed for any purpose other than the purposes of this proceeding, and then solely in accordance with this Order. No person to whom access to Designated Confidential Information is accorded pursuant to Paragraph 4 of this Order shall disclose or reveal, directly or indirectly, the content of the Designated Confidential Information to others, except as provided in Paragraph 4.
3. That the parties to whom Designated Confidential Information is furnished may challenge designation of any documents or other information as confidential by motion to the Commission and upon reasonable prior notice to the parties and an opportunity for hearing. Upon the entry of an order granting such a motion, the provisions and restrictions of this Order shall cease to bind any party or other person with respect to the documents or

information that the Order granting the motion shall have expressly and clearly removed from the coverage of this Order.

4. That, until this Order is modified, access to Designated Confidential Information shall be limited to (i) Commission members and members of the Commission Staff; (ii) the Public Advocate and counsel; (iii) a stenographer or reporter recording any hearing in connection with this proceeding; (iv) counsel for or any other representative of CMP or PSNH; (v) other parties and their counsel, not including Bangor Hydro Electric Company, or parties who are Abutters (“Intervening Abutters”) or Business Competitors to CMP or PSNH; (vi) outside counsel for parties who are Business Competitors, provided that such counsel shall agree to use the Designated Confidential information solely for the purposes of this proceeding and not disclose the information to any other person and provided further the attorney does not have a “personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information” (35-A M.R.S. § 1311-A(1)(D)(2)); (vii) counsel for Intervening Abutters, provided that such counsel is not also representing the Intervening Abutter in negotiations with CMP or PSNH and such counsel shall agree to use the Designated Confidential information solely for the purposes of this proceeding and not disclose the information to any other person and provided further the attorney does not have a “personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information” (35-A M.R.S. § 1311-A(1)(D)(2)); (viii) outside counsel for Bangor Hydro Electric Company, provided that such counsel shall agree to use the Designated Confidential information solely for the purposes of this proceeding and not disclose the information to any other person and provided further the attorney does not have a “personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information” (35-A M.R.S. § 1311-A(1)(D)(2)); and (ix) a consultant for one of the foregoing entities, provided the consultant shall agree to use the Designated Confidential information solely for the purposes of this proceeding and not disclose the information to any other person, provided the consultant does not have a “personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information”, and provided a consultant to an Intervening Abutter is not also representing the Intervening Abutter in negotiations with CMP or PSNH.
5. That no copies of Designated Confidential Information furnished by Petitioners shall be circulated to persons other than those persons who are authorized under Paragraph 4 of this Order to obtain Designated Confidential Information. Documents offered in evidence may be copied as necessary for that purpose. Persons authorized under Paragraph 4 hereof also may take such notes as may be necessary solely for the purposes of this proceeding. Those notes shall also be treated as Designated Confidential Information.
6. All materials claimed by Petitioners to be Designated Confidential Information under the terms of this Order shall be clearly marked “Confidential” by Petitioners. In the case of documents, each page of any such document shall be stamped “Confidential” in bold lettering in the upper right hand corner of each page including the cover letter. Any document or portion thereof not clearly and conspicuously marked “Confidential” in bold lettering shall not be protected under the terms of this Order. Faxed materials should be

marked as any other confidential document. With regard to other media, diskettes should be marked "Confidential" on the outside and each file on the diskette should be similarly identified. Materials produced electronically shall be marked "confidential" and access to electronically-produced confidential materials shall be limited according to the terms and limitations provided in this Order. Any person or party subject to the terms of this Order who receives unmarked documents or materials which s/he believes Petitioners intended to be protected by the terms of this Order, and that would have been protected if marked in accordance with this paragraph, shall make a good faith effort to notify Petitioners of this fact and to avoid use of such documents or materials in a manner inconsistent with protection of such material under this Order.

7. That the restrictions upon, and obligations accruing to, persons who become subject to this Order shall not apply to any Designated Confidential Information submitted in accordance with Paragraph 1 of this Order if the Commission rules, after reasonable notice and hearing, that the Designated Confidential Information was publicly known at the time it was furnished or has since become publicly known through no fault of the receiving party.
8. That where reference to Designated Confidential Information is required in pleadings, briefs, other legal documents, or argument, the reference shall be by citation of title or exhibit number only or by some other non-confidential description to the extent possible. In those circumstances, counsel shall make every reasonable effort to preserve the confidentiality of material in the sealed record. If counsel shall include Designated Confidential Information in pleadings, briefs, other legal documents, or arguments, that portion of the documents or that portion of the transcript of the argument containing Designated Confidential Information shall be maintained under seal.
9. That the Commission may draw upon all Designated Confidential Information in the record in the deliberation of any decision or order that it may issue, but the Commission will avoid the reproduction in its decision of any Designated Confidential Information.
10. That should any appeal of, or other challenge to, the Commission's decision in this proceeding be taken, any portions of the record that have been sealed in accordance with Paragraph 7 above shall be forwarded to the courts of this State in accordance with applicable law and procedures, but under seal and so designated in writing for the information of the court.
11. That this Order does not preclude any party from (a) objecting under the Maine Rules of Evidence to the admissibility of any Designated Confidential Information produced by CMP or PSNH or (b) objecting, on any substantive or procedural ground, to any subsequent data request or other request for information.
12. That Petitioners may, at their option, provide to each person having access to Designated Confidential Information a copy of this Order and require each person to agree in writing to the terms hereof prior to obtaining access to the Designated Confidential Information.

13. That Designated Confidential Information made available pursuant to this Order and made part of the record in any proceeding before the Commission shall remain in the possession of the Commission, under seal, and subject to the protective requirements of this Order, until this Commission or its authorized presiding officer shall otherwise order.
14. That this Order may be modified on motion of any party or on the Commission's own motion upon reasonable prior notice to the parties and an opportunity for hearing.
15. Copies of Designated Confidential Information and documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Information, that are in possession of Commission members, counsel or employees of the Commission may be retained by those persons for the purpose of performing those persons' duties and obligations. If retained, the Designated Confidential Information shall be subject to this Protective Order or to a protective order issued in another proceeding in which the Designated Confidential Information is used. If a Commission member, counsel or employee of the Commission does not retain the Designated Confidential Information, that person shall destroy it as provided in this paragraph. Within 40 days after the Commission reaches a final decision (*i.e.*, unappealable) in this proceeding, each other party and Commission independent consultants and experts retained by the Commission to whom Designated Confidential Information has been made available shall destroy all documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Information. Audio, video or other such magnetically recorded materials shall be electronically erased before disposal. Documents shall be shredded.

Dated at Augusta, Maine, this \_\_\_ day of August, 2008

BY ORDER OF THE HEARING EXAMINER

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