

# Holland & Knight

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April 28, 2016

**VIA ELECTRONIC MAIL AND  
OVERNIGHT MAIL**

Melanie A. Bachman  
Acting Executive Director  
State of Connecticut  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051

Re: **PETITION NO. 1218** - PSEG Power Connecticut LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a new 485 megawatt (MW) dual fuel combined-cycle electric generating facility at the existing Bridgeport Harbor Station located at 1 Atlantic Street, Bridgeport, Connecticut

Dear Ms. Bachman:

Enclosed please one original and fifteen (15) copies of PSEG Power Connecticut LLC's responses to the Connecticut Siting Council's (the "Council") first set of interrogatories. Pursuant to the Council's Procedures for Filing Proprietary Information Under Protective Order (the "Procedures"), PSEG requests protective treatment of certain information included in responses 8, 9 and 10, and submits its Motion for Protective Order and the required supporting documentation.

As required by the Procedures, one copy of each of the confidential responses is enclosed in the sealed envelope and labeled "CONFIDENTIAL – PROPRIETARY INFORMATION \*\*Subject to Non-Disclosure Agreement and Protective Order\*\* CONNECTICUT SITING COUNCIL PETITION NO. 1218, PSEG POWER CONNECTICUT LLC CONFIDENTIAL FILING, APRIL 28, 2016, Competitive Market Information."

As further required by the Procedures, enclosed are an original and fifteen (15) copies of the following documents:

- a. A Motion for Protective Order and a Memorandum of Law describing the legal standards upon which the motion is based;
- b. A proposed Protective Order for signature by the Chairman;

- c. A proposed Non-Disclosure Agreement for signature by requesters of the proprietary information; and
- d. A proposed Request for Information for completion by persons seeking access to the proprietary information.

Please note that the Affidavit of Joel S. Gordon stating specifically why the information should be protected is being provided under separate cover. If you require further information, or have any questions, do not hesitate to contact me at (212) 513-3473, or via email at steve.humes@hklaw.com.

Sincerely yours,

HOLLAND & KNIGHT LLP



Stephen J. Humes

Enclosures

cc:      Meredith L. Hiller, Esq.  
          Leilani M. Holgado, Esq.  
          Kathryn Gerlach  
          Robert Silvestri  
          James R. Morrissey, Esq.

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

PSEG Power Connecticut LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a new 485 megawatt (MW) dual fuel combined-cycle electric generating facility at the existing Bridgeport Harbor Station located at 1 Atlantic Street, Bridgeport, Connecticut

PETITION NO. 1218

April 28, 2016

**CERTIFICATE OF SERVICE**

This is to certify that copies of the foregoing transmittal letter with the following enclosures:

**Motion for Protective Order and Memorandum of Law**

**Affidavit of Joel S. Gordon**

**Proposed Protective Order**

**Proposed Non-Disclosure Agreement**

**Proposed Request for Information**

were sent to each party and intervenor on the service list dated April 21, 2016, with method of service to each party and intervenor listed via e-mail on April 28, 2016.

cc: Service List Dated April 21, 2016

Dated: April 28, 2016



Stephen J. Humes

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

PSEG Power Connecticut LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a new 485 megawatt (MW) dual fuel combined-cycle electric generating facility at the existing Bridgeport Harbor Station located at 1 Atlantic Street, Bridgeport, Connecticut

PETITION NO. 1218

April 28, 2016

**MOTION OF PSEG POWER CONNECTICUT LLC  
FOR A PROTECTIVE ORDER WITH RESPECT  
TO COMPETITIVE MARKET INFORMATION**

PSEG Power Connecticut LLC (“PSEG” or the “Applicant”) hereby moves that the Connecticut Siting Council (the “Council”) enter a protective order in this proceeding to ensure that proprietary information provided to the Council is not subject to unrestricted, general public disclosure. Specifically, for the reasons set forth in the attached Applicant’s Memorandum of Law in Support of Motion for Protective Order (the “Memorandum”), and the attached Affidavit of Joel S. Gordon filed this day with the Council, PSEG asks that this protective order apply to the ramp rates, start-up times, heat rate and fuel consumption information, all of which comprise competitive market information (the “market information”) related to the proposed 485 megawatt dual fuel combined-cycle electric generating facility at the existing Bridgeport Harbor Station located at 1 Atlantic Street, Bridgeport, Connecticut (the “Facility”) to be filed in the above-captioned docket. As part of the Applicant’s responses to the Council’s interrogatories 8, 9 and 10, the market information is being filed contemporaneously with this motion, in a sealed and properly labeled envelope, as well as in redacted versions of PSEG’s responses.

PSEG further requests that such order apply to such other proprietary information as PSEG may be required to file in this proceeding.

As explained more fully in the accompanying Memorandum of Law, the proprietary information that comprises the market information is entitled to confidential treatment under the Connecticut Freedom of Information Act. Such treatment is also consistent with the policies of the Federal Energy Regulatory Commission and the Independent System Operator - New England.

PSEG asks that disclosure of the market information under the protective order be limited, and that parties and intervenors who are not otherwise entitled to have access to the information who wish to review it be required to execute a request for information and non-disclosure agreement, the forms of which are attached to the proposed protective order filed herewith.

Respectfully submitted,

PSEG POWER CONNECTICUT LLC



By: \_\_\_\_\_

Stephen J. Humes  
Meredith L. Hiller  
Holland & Knight LLP  
Its Attorneys  
31 West 52<sup>nd</sup> Street  
New York, NY 10019  
(212) 513-3473

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

PSEG Power Connecticut LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a new 485 megawatt (MW) dual fuel combined-cycle electric generating facility at the existing Bridgeport Harbor Station located at 1 Atlantic Street, Bridgeport, Connecticut

PETITION NO. 1218

April 28, 2016

**APPLICANT'S MEMORANDUM IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER**

PSEG Power Connecticut LLC (“PSEG”) hereby respectfully submits this memorandum in support of its Motion for Protective Order (the “Motion”) filed on even date herewith, seeking to protect from public disclosure certain proprietary information submitted as market information related to the Applicant’s proposed 485 megawatt dual fuel combined-cycle electric generating facility at the existing Bridgeport Harbor Station located at 1 Atlantic Street, Bridgeport, Connecticut (the “Facility”). The Motion is supported by the Affidavit of Joel S. Gordon.

**I. BACKGROUND**

The Motion filed in connection with this memorandum seeks protection for documents that contain proprietary information. The Procedures for Filing Proprietary Information Under Protective Order adopted by the Siting Council (the “Council”) define proprietary information as “any information that may be exempt from public disclosure under the Freedom of Information Act (“FOIA”), C.G.S. §1-210(b).”

In its Pre-hearing Interrogatories - Set 1, the Council requested the following:

- 8) What are the approximate cold and hot start-up times for the plant if dispatched?

9) Could the plant provide spinning reserves? What is the approximate ramp rate of the plant in MW/minute if the plant had to ramp up or ramp down in response to ISO-NE dispatch?

10) On page 5 of the Petition, the PSEG notes that the Facility has provisions for use of ULSD for up to 30 days per year as a backup fuel. Is this based on 30 days of actual on-site ULSD storage or does it include fuel deliveries during that time period? What is the approximate ULSD consumption rate in gallons per day (gpd) for full load conditions operating on ULSD? Was the approximate full load natural gas consumption rate when operating on natural gas?

PSEG seeks a protective order in this docket to protect the confidentiality of the Facility's ramp rates, start-up times, heat rate and fuel consumption information, all of which comprise competitive market information (the "market information"). PSEG asserts that the market information is entitled to protection as proprietary information.

#### Connecticut Law

As noted in the Procedures, the protection for proprietary information arises from Connecticut General Statutes ("C.G.S.") § I-210(b). The market information is protected under § 1-210(b), which provides in relevant part:

(b) Nothing in the Freedom of Information Act shall be construed to require disclosure of:

... (5) (A) Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including *formulas, patterns, compilations, programs, devices, methods, techniques, processes*, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy; and

(B) *Commercial* or financial information given in confidence, not required by statute ...

(emphasis added).

In addition, protection for proprietary information arises under the Uniform Trade Secrets Act (“UTSA”) § 35-51(d), which mirrors the FOIA definition of trade secrets in § I-210(b). The UTSA further provides in § 35-55 that courts shall preserve the secrecy of alleged trade secrets by reasonable means, including granting protective orders in connection with discovery proceedings.

#### FERC and ISO-NE Protection of Proprietary Information

The statutory protection from public disclosure for proprietary information is entirely consistent with the information protected by the Federal Energy Regulatory Commission (“FERC”) and the Independent System Operator-New England (“ISO-NE”). FERC has established procedures for special treatment for the filing of critical energy infrastructure information or privileged material. FERC considers trade secrets to be privileged material, as well as other information exempt from disclosure under the federal Freedom of Information Act. *See*, C.F.R. § 388.107 and § 388.112. Similarly, ISO-NE protects the filing of trade secrets as confidential pursuant to Attachment D, ISO-NE Information Policy.

*See, [www.iso-ne.com/regulatory/tariff/attch\\_d/attachment-d.pdf](http://www.iso-ne.com/regulatory/tariff/attch_d/attachment-d.pdf).*

## **II. DISCUSSION**

C.G.S. § 1-210(b)(5)(A) and § 35-51(d) of the UTSA specifically recognize processes, methods and techniques as trade secrets. Also, C.G.S. § 1-210(b)(5)(B) recognizes commercial information given in confidence, not required by statute. Trade secrets are protected from public disclosure under the Connecticut FOIA and the UTSA under two conditions. First, there must be “independent economic value, actual or potential” from such information that is not otherwise known or ascertainable to persons who can obtain economic value from its disclosure or use, and second, there must be reasonable efforts to maintain the secrecy of such information. The market information satisfies both conditions.

### 1. Independent Economic Value

The proposed Facility's market information is the type of commercially sensitive market information that has independent economic value because it is not generally known. If this information about how quickly the Facility can participate in the market and the Applicant's costs to participate in the market were made public, competitors would have an unfair advantage over the Applicant and PSEG would be unable to compete effectively in the electricity markets. Therefore, the market information has independent economic value to PSEG now and to its customers in the future. The market information is not otherwise known to or ascertainable by competitors, who would gain economic value from knowing PSEG's ability to respond to market signals, because they are not publicly filed.

## 2. Reasonable Efforts to Maintain Secrecy

PSEG has not provided the market information for the proposed Facility without requesting protective treatment in any past public proceedings. The information is maintained at PSEG and can only be accessed by certain members of the project team. Thus, PSEG closely maintains the secrecy of its market information.

Therefore, the market information constitutes trade secrets that satisfy the conditions in C.G.S. § 1-210(b)(5)(A) and UTSA § 35-31(d) and commercial information under C.G.S. § 1-210(b)(5)(B). Accordingly, the market information is proprietary information for which a protective order is warranted.

## 3. Commercial Information

The market information for the proposed Facility is also covered by the Connecticut FOIA as commercial information given in confidence, not required by statute. PSEG is providing this sensitive market information to the Council in confidence as part of this proceeding, not pursuant to a specific statutory requirement. This type of information is routinely protected by courts and state agencies since its publication would harm commercial interests.

### III. CONCLUSION

The market information, submitted herewith, is proprietary information, the nondisclosure of which is protected under the Connecticut FOIA and UTSA. Protection of this proprietary information is consistent with the policies established by FERC and ISO-NE. Therefore, PSEG respectfully requests that the Council grant its request for a Protective Order with respect to this proprietary information.

Respectfully submitted,

PSEG POWER CONNECTICUT LLC



By: \_\_\_\_\_

Stephen J. Humes  
Meredith L. Hiller  
Holland & Knight LLP  
Its Attorneys  
31 West 52<sup>nd</sup> Street  
New York, NY 10019  
(212) 513-3473

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

PSEG Power Connecticut LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a new 485 megawatt (MW) dual fuel combined-cycle electric generating facility at the existing Bridgeport Harbor Station located at 1 Atlantic Street, Bridgeport, Connecticut	PETITION NO. 1218 April 27, 2016
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**AFFIDAVIT OF JOEL S. GORDON**

STATE OF NEW HAMPSHIRE )  
 ) ss: Hillsborough April 26, 2016  
COUNTY OF HILLSBOROUGH )

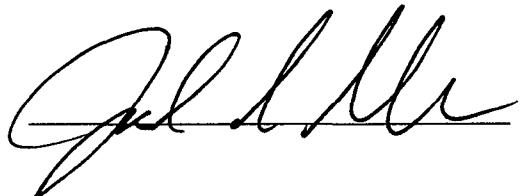
Joel S. Gordon, being duly sworn, states:

1. I am the Director of Market Policy for PSEG Power Connecticut LLC (“PSEG”). My office is located at Steeple Lane, Amherst, New Hampshire, 03031. I am over the age of eighteen years and understand the obligations of making statements under oath.

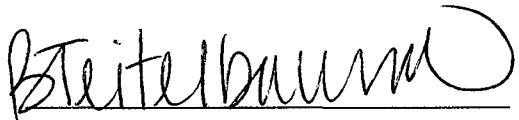
2. I am familiar with the documents filed in the Petition No. 1218 proceeding, now pending before the Connecticut Siting Council, and the interrogatory responses to CSC-08, CSC-09 and CSC-10, which contain confidential market information (the "market information") for the proposed new 485 MW dual fuel combined-cycle electric generating facility at the existing Bridgeport Harbor Station located at 1 Atlantic Street, Bridgeport, Connecticut (the "Facility").

3. I submit this affidavit in support of a Motion for Protective Order filed by PSEG seeking to limit disclosure of the market information.

4. The market information in certain responses to interrogatories related to the Facility's ability to participate in the electricity markets is proprietary, and its disclosure could result in undermining the competitive ability of the Facility.



Subscribed and sworn to before  
me this 26<sup>th</sup> day of April, 2016



Notary Public Bess Teitelbaum  
My Commission Expires: 01/15/2019



STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

PSEG Power Connecticut LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a new 485 megawatt (MW) dual fuel combined-cycle electric generating facility at the existing Bridgeport Harbor Station located at 1 Atlantic Street, Bridgeport, Connecticut

PETITION NO. 1218

April 28, 2016

**PROTECTIVE ORDER RE:  
PROPRIETARY INFORMATION**

On April 28, 2016, PSEG Power Connecticut LLC (“PSEG” or the “Applicant”) filed in the above-captioned proceeding certain competitive market information related to ISO-NE dispatching of the proposed 485 megawatt (MW) dual fuel combined-cycle electric generating facility at the existing Bridgeport Harbor Station located at 1 Atlantic Street, Bridgeport, Connecticut (the “Facility”).

PSEG asserts that the market information is proprietary information (“PI”), and has requested that a protective scheme be implemented for this data, and for such other PI as PSEG may be required to file in this petition proceeding. The Council has defined PI as “any information that may be exempt from public disclosure under the Freedom of Information Act (“FOIA”), C.G.S. §1-210(b).”

PSEG maintains that protecting such proprietary information from disclosure is consistent with the policies of the Federal Energy Regulatory Commission (“FERC”) and ISO-NE; that its release would be damaging to PSEG’s interests and the public interest; and that such information is exempt from disclosure under the state Freedom of Information Act pursuant to section 1-210(b)(5)(A) and (B) of the General Statutes.

Accordingly, it is

**ORDERED**

1. Until this Order is modified, access to the PI shall be limited as described in Paragraph 4 below.
2. That the PI and such information designated as PI as PSEG shall hereafter file in this petition proceeding shall, unless removed from the coverage of this Order as provided in Paragraph 3 below, be and remain confidential. PI 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 PI is accorded pursuant to Paragraph 4 of this Order shall

disclose or reveal, directly or indirectly, the content of the PI to others, except as provided in Paragraph 4.

3. That the parties and intervenors to whom PI is furnished may challenge designation of any documents or other information as confidential by motion to the Council 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 PI filed in this proceeding shall be limited to: (i) the Council and its staff; (ii) parties and intervenors in this proceeding, and their counsel, who have agreed to be bound by this protective order; (iii) a consultant engaged for the purpose of this proceeding for one of the foregoing persons or entities; and (iv) a stenographer or reporter recording any hearing in connection with this proceeding as part of the official record of the proceeding.

Any such recipient of PI shall agree to use the PI solely for the purposes of this proceeding and not disclose the information to any other person. Each person within an entity or organization must complete a PI Request Form and Non-Disclosure Agreement, similar to the forms attached.

5. That no copies of PI furnished by PSEG shall be circulated to persons other than those persons who are authorized under Paragraph 4 of this Order to obtain PI. 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 PI. Although a person authorized to obtain PI may use the information as foundation for advice to his or her employer or clients, s/he may only discuss the PI with or disclose PI to another person authorized to receive identical PI.
6. All materials claimed by PSEG to be PI under the terms of this Order shall be clearly marked “Proprietary Information” by PSEG, and shall bear an appropriate legend identifying them as such. When PI is intermixed with other materials, it must be securely redacted, and the redaction must be accompanied by a notation: “Confidential PI.” Each volume or document that contains such redactions shall include a prominent explanatory legend. Faxed materials should be marked as any other confidential document. With regard to other media, diskettes should be marked “*Confidential PI*” 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 accordingly 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 Applicant 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 PSEG 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 PI submitted in accordance with Paragraph 1 of this Order if the Council rules, after reasonable notice and hearing, that the PI 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 PI 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 PI in pleadings, briefs, other legal documents, or arguments, that portion of the documents or that portion of the transcript of the argument containing PI shall be maintained under seal.
9. That the Council may draw upon all PI in the record in the deliberation of any decision or order that it may issue, but will avoid the reproduction in its decision of any PI.
10. That should any appeal of, or other challenge to, the Council's decision in this proceeding be taken, any portions of the record that have been sealed in accordance with Paragraph 6 above shall be forwarded to the courts of this State or other court having subject matter jurisdiction, in accordance with applicable law and procedures, under such protective order as may be entered by the court.
11. That PI made available pursuant to this Order and made part of the record in any proceeding before the Council shall remain in the possession of the Council, under seal, and subject to the protective requirements of this Order, until this Council shall otherwise order,
12. That this Order may be modified on motion of any party or on the Council's own motion upon reasonable prior notice to the parties and an opportunity for hearing.

That copies of PI and documents, notes and other materials containing or reflecting, directly or indirectly, the PI that are in possession of the Council's commissioners, counsel or employees may be retained by those persons for the purpose of performing those persons' duties and obligations. If retained, the PI shall be subject to this Protective Order or to a protective order issued in another proceeding in which the PI is used. If such a member, counsel or employee of the Commission does not retain the PI, that person shall destroy it as provided in this paragraph. When the Council determines that any PI is no longer required for its work, it shall destroy the material. All parties and intervenors to whom PI has been made available in the proceeding, their counsel and retained experts, shall destroy all documents, notes and other materials containing or reflecting, directly or indirectly, the PI. Audio, video or other such magnetically recorded materials shall be electronically erased before disposal. Paper documents shall be shredded.

SO ORDERED:

CONNECTICUT SITING COUNCIL

BY \_\_\_\_\_

Robert Stein  
Chairman

Dated: \_\_\_\_\_, 2016

**NON-DISCLOSURE AGREEMENT WITH  
AGREEMENT TO BE BOUND BY THE  
TERMS OF THE PROTECTIVE ORDER**

The undersigned hereby acknowledges review of the Protective Order filed on April 28, 2106 in Petition No. 1218 before the Connecticut Siting Council, and hereby agrees to abide by the terms thereof, in exchange for receipt of

Connecticut Siting Council Petition No. 1218, Interrogatory Responses CSC-08, CSC-09 and CSC-10

Any additional material to be filed in this Docket for which proprietary information status is claimed by the Applicant.

Recipient: \_\_\_\_\_

Date: \_\_\_\_\_

**REQUEST FOR INFORMATION  
PROPRIETARY INFORMATION  
PURSUANT TO PROTECTIVE ORDER**

1. This form must be accompanied by an original signed Non-Disclosure Agreement or a Subscription to a Protective Order entered in an administrative proceeding, if you are a party or intervenor in an administrative proceeding and are not employed by the Independent System Operator, New England or a federal or state agency. If you have already signed a Non-Disclosure Agreement, please provide the date: \_\_\_\_\_

2. The undersigned requests the following information:

Connecticut Siting Council Petition No. 1218, Interrogatory Responses CSC-08, CSC-09 and CSC-10

Any additional material to be filed in this Docket for which proprietary information status is claimed by the Applicant.

3. The undersigned is:

a party or intervenor in the proceeding identified in paragraph 3, having been admitted as such or \_\_\_\_\_  
 a consultant of one of the entities listed above who has been retained to provide advice regarding the matter described in paragraph 5 below

4. Give the name of your employer and your title: \_\_\_\_\_

5. The undersigned represents warrants and agrees that the information is to be used solely for the following purpose [describe in detail]: \_\_\_\_\_

6. If you are a consultant, provide the name and contact information of an individual at the organization that has retained you so that we may verify your role: \_\_\_\_\_

I acknowledge that the foregoing is true and accurate, and agree to give PSEG Power Connecticut LLC immediate notice if any of the foregoing is no longer true. I also consent to PSEG Power Connecticut LLC and its affiliated companies sharing the fact that this request has been made and/or granted, and agree that PSEG Power Connecticut LLC and its parent and affiliated companies shall have no liability to me in connection with this request.

Signature: \_\_\_\_\_

Name (please print): \_\_\_\_\_

Organization: \_\_\_\_\_

Business Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Date: \_\_\_\_\_