

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Default Energy Service Rate for 2014

Docket No. DE 13-275

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S MOTION FOR
CONFIDENTIAL TREATMENT REGARDING
OCA QUESTION 1-17 AND PSNH'S REVIEW OF GENERATION COSTS

Pursuant to RSA 91-A:5, IV and N.H. Code Admin. Rules Puc 203.08, Public Service Company of New Hampshire ("PSNH") hereby requests protective treatment for a portion of the response to data request 1-17 propounded by the Office of Consumer Advocate ("OCA") on PSNH. The question seeks information about the projected operation of Wyman Station, a generating facility in which PSNH holds a minority interest. In its response PSNH provided information otherwise available to the public, and identified as confidential only that portion of the response dealing with another entity's private plans for the future operations of the station, of which PSNH is aware through its minority interest. Further, PSNH requests that certain operating and maintenance ("O&M") information contained in its Review of Costs ("Report") be granted confidential treatment. PSNH asserts that its response and the Report contain confidential commercial information eligible for protection from public disclosure under RSA 91-A:5. In support of its Motion for Confidential Treatment, PSNH says the following:

1. With respect to data request OCA 1-17, that request reads as follows:

Question:

Please discuss Wyman Station's status and participation in the Forward Capacity Market (FCM). Through what date does Wyman have FCM obligations? Has Wyman sought to delist or end its participation in the FCM?

2. Before granting confidential treatment, the Commission must determine if there is a privacy interest to protect. See *Public Service Company of New Hampshire*, Order No. 25,187 (Dec. 29, 2010) at 8, citing, *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008). Then the Commission will determine whether there is a public interest in disclosure. *Public Service*, Order No. 25,187 at 8. If both of these steps are met, the Commission will use a balancing test to weigh the importance of keeping the record public against the harm from disclosure of the material for which protection is requested. *Id.*

3. Data request OCA 1-17 seeks information about the future operations and intentions of Wyman Station, in which PSNH holds a minority interest. Release of this information to the public may place the station at a disadvantage in the marketplace and could impact its future operations. Furthermore, because PSNH is a minority owner, it has no practical ability to affect the manner in which the station is operated or its participation in the FCM. As such, requiring the disclosure of the information would mean that PSNH would be disclosing the information of another entity regarding its plans for the future operations of the station. Accordingly, there is a privacy interest to protect.

4. In that there is a privacy interest in the above described information, the Commission must now determine whether there is any public interest in disclosure of the information. “Disclosure that informs the public of the conduct and activities of its government is in the public interest; otherwise disclosure is not warranted.” *Public Service Company of New Hampshire*, Order No. 25,187 at 8. The participation of Wyman Station in the FCM is not a matter over which the Commission exercises jurisdiction. Accordingly, information about that participation would not inform the public about the conduct of the government. Further, while some costs relating to

Wyman Station may factor into the computation of PSNH's estimated ES rate, its participation in the FCM in future years beyond the one at issue in this docket is not part of that calculation. Accordingly, there is essentially no public interest in the information.

5. In that there is little or no public interest in the disclosure of the information, confidential treatment should be granted. Even assuming there is a public interest, that interest must be balanced against any privacy interest in non-disclosure. *Public Service Company of New Hampshire*, Order No. 25,332 (Feb. 6, 2012) at 17. Given the minimal public interest in the information, the privacy interest outweighs any public interest that may be implicated by the information. Accordingly, confidential treatment is proper.

6. With respect to the Report, the Report was initially undertaken in compliance with a requirement of the Commission in Order No. 25,380 (June 27, 2012) in Docket No. DE 11-215. In that Order the Commission required that the Report be filed at the time of PSNH's next ES rate filing, but did not make the Report a substantive part of that filing. An update to the Report was required in Order No. 25,535 (June 27, 2013) and PSNH provided that update at the time of its ES rate filing in this docket on September 27, 2013. The report is not, and never has been, a substantive portion of PSNH's ES rate filing.

7. PSNH has a privacy interest in the O&M information in the Report because it reveals detailed information about the manner in which PSNH operates its generating fleet. Releasing the O&M information in the Report would put PSNH at a disadvantage relative to other generators and energy suppliers who would gain knowledge about PSNH's operations of its units and the costs of those operations. Thus, PSNH submits that its privacy interest in this information is evident. PSNH also notes that disclosure of the redacted information would reveal information about PSNH's use of contractors, which may make it more difficult for PSNH

to negotiate with potential contractors in the future. The disadvantages created by disclosure would result in PSNH's generating units potentially being less competitive, which would lead to higher costs for PSNH's customers. As such, PSNH's privacy interest in the redacted O&M information is strong.

8. PSNH acknowledges that there is information in the Report relating to the costs of PSNH's generating units and that PSNH uses these costs to compute its estimated default service rate, which is evaluated by the Commission. Therefore, it is arguable that there is some public interest in disclosure of the redacted material in the Report. The specific O&M information that PSNH seeks to protect, however, is only part of the information used to calculate PSNH's rates, and use of this information would provide, at best, a limited picture of PSNH's costs and operations. Furthermore, while this information relates to PSNH's costs, the information in the Report, as noted, is not part of PSNH's ES rate filing. As such, disclosure of the O&M information would not provide substantial or meaningful information about either PSNH's rates or how the Commission conducts its activities. Accordingly, the public interest is slight.

9. When there is a public interest, that interest must be balanced against any privacy interest in non-disclosure. *Public Service Company of New Hampshire*, Order No. 25,332 (Feb. 6, 2012) at 17. In balancing these interests, the Commission has previously considered whether disclosure of the information would place the utility and its service providers at a disadvantage with respect to those with whom they would do business. *See EnergyNorth Natural Gas, Inc. d/b/a/ National Grid NH*, Order No. 25,208 (Mar. 23, 2011) at 11. In addition, the Commission has previously concluded that since keeping certain information relating to generating units confidential helps produce lower rates, the public interest in disclosure does not outweigh the benefits of confidentiality. *See, e.g. Public Service Company of New Hampshire*, Order No.

25,187 (Dec. 29, 2010) at 9-10 and *Public Service Company of New Hampshire*, Order No. 25,061 (Dec. 31, 2009) at 23-24, 27.

10. As noted above, the specific O&M information that PSNH seeks to protect from public disclosure would provide only limited benefits to the public in determining how the Commission conducts its activities. Disclosure, however, would substantially harm PSNH because it would reveal information about how PSNH runs its generating fleet. In that PSNH has a strong privacy interest in the Report and the information in it, and that there is limited public interest in disclosure, confidential treatment is warranted.

WHEREFORE PSNH respectfully requests the Commission issue an order preventing the public disclosure of the response to OCA 1-17 and the identified O&M information in the Report and to order such further relief as may be just and equitable.

Respectfully submitted,
Public Service Company of New Hampshire

12/5/13
Date

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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 served pursuant to N.H. Code Admin. Rule Puc 203.11.

12/5/13
Date


Matthew J. Fossum