

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

NEW HAMPSHIRE REGULATED UTILITIES

October 2011 Snow Storm

Order Granting Requests for Confidential Treatment

ORDER NO. 25,457

January 18, 2013

I. BACKGROUND

In late 2011, the Commission undertook an extensive review of electric utility responses to the October 2011 Snowstorm.¹ Among the issues reviewed by the Commission were: 1) timing and manner of crew acquisition; 2) communications with state officials and local emergency management directors; and 3) communications with customers.

In conducting its review, the Commission Staff issued data requests to the State's four electric distribution utilities, as well as Wilton Telephone Company, Inc. d/b/a TDS Telecom. As part of the discovery process, the Commission reviewed communications between the electric utilities and state and municipal officials, as well as with the public. Several electric utilities requested confidential treatment, pursuant to RSA 91-A:5 and N.H. Code Administrative Rules Puc 203.08, of certain responses to data requests issued by Commission Staff.

¹ A copy of the full report is available at:
[http://www.puc.nh.gov/2011OctSnowstorm/October%202011%20Snowstorm%20\(11-20-12\)%20final.pdf](http://www.puc.nh.gov/2011OctSnowstorm/October%202011%20Snowstorm%20(11-20-12)%20final.pdf).

II. SUMMARY OF REQUESTS FOR CONFIDENTIAL TREATMENT

A. Granite State Electric Company d/b/a National Grid

On April 5, 2012, Granite State Electric Company d/b/a National Grid (Granite State) filed a motion for confidential treatment of information provided in responses to Staff data requests 1-20, 1-43 and 1-45. The requests sought copies of all correspondence between Granite State and its then parent company, National Grid, regarding storm preparation and response (1-20), mutual assistance and crew allocation (1-43), and all other communications between Granite State and its parent regarding storm restoration (1-45).

1. Personal Contact Information

In its motion, Granite State stated that its responses to these data requests included e-mails and other documentation that contained the personal cell phone numbers, personal addresses, and personal e-mail addresses of National Grid employees and contract workers. Granite State asserted that the data responses also included confidential, security-related information designed to protect the welfare of National Grid employees performing storm-related duties in the field and emergency procedure information designed to give National Grid employees access to emergency-related and storm restoration information. Granite State claimed that it is entitled to confidential treatment pursuant to RSA 91-A:5, or other applicable law, based on a clear privacy interest in the personal contact information of National Grid employees and contract workers assisting in restoration efforts. Granite State further stated that such information is not generally disseminated or made available to the public. In this instance, according to Granite State, personal contact information was provided by employees and contract workers during the course of performing storm-related duties in order to facilitate communication between and among those working in the field as well as to maintain close

contact with personnel located in storm centers and coordinating restoration efforts. Granite State asserted that National Grid employees and contract workers maintain a reasonable expectation of privacy in their personal cell phone numbers, their home addresses and their personal e-mail addresses, and that such information should not be subject to public disclosure. Granite State redacted the personal contact information from the e-mails and correspondence submitted in its data responses.

Granite State argued that disclosure of the personal contact information for which it seeks protection will not provide the public with information about the conduct or activities of the Commission or other parts of New Hampshire state or local government.² Additionally, it maintained that, absent any public policy interest compelling disclosure that outweighs the privacy interest of National Grid employees and contractor workers, the information warrants confidential treatment.

2. Internal Security and Emergency Procedure Information

Granite State further indicated that in responses to data requests 1-43 and 1-45, it produced confidential information regarding internal security and emergency procedures for National Grid employees. Specifically, the redacted information in the responses included a special, non-public phone number available only to National Grid employees to provide access to emergency-related and restoration information, and an employee code designed to signal that an emergency field worker is being harassed or detained in the course of performing storm-related duties. Granite State asserted that this information is not generally disseminated or made available to the public, and that its interest in maintaining the confidentiality of such information is motivated by a desire to avoid disclosure of emergency and restoration information intended to assist National Grid employees in the performance of their storm-related duties and to safeguard

² *Citing Public Service Co. of N.H.*, DE 09-158, Order No. 25, 059 at 14-15 (December 31, 2009).

the wellbeing of field workers under emergency conditions. Granite State contended that the release of this information to the public could disrupt employee performance of storm-related duties if sensitive internal information were intercepted by the public, and could increase the risk of false calls, thus potentially hindering an employee's ability to obtain timely assistance in a time of need.

Granite State argued that disclosure of the internal procedural information for which it seeks protection will not provide the public with information about the conduct or activities of the Commission or other parts of New Hampshire state or local government,³ and may create unnecessary risk of disruption to the performance of storm-related duties and security risk for employees. Granite State further argued that any balancing of interests should be struck in favor of confidentiality.

B. Public Service Company of New Hampshire

On May 9, 2012, the Commission received a request for confidential treatment pursuant to Puc 203.08(d) from Public Service Company of New Hampshire (PSNH) regarding Audit Request Q-AUDIT-2-028,⁴ which requested copies of all system circuit maps by Area Work Center. PSNH asserted that circuit maps are confidential, commercial information exempt from disclosure under RSA 91-A:5, and, further, that the circuit maps contain information similar or identical to that deemed by the Federal Energy Regulatory Commission (FERC) to be critical energy infrastructure information (CEII) that is exempt from mandatory disclosure under the federal Freedom of Information Act. PSNH requested that its circuit maps be treated as confidential as required by the FERC regulation and pursuant to New Hampshire statutes and Commission rules.

³ See *Public Service Co. of NH.*, DE 09-158, Order No. 25, 059 at 14-15 (December 31, 2009).

⁴ PSNH uses its own nomenclature when responding to Commission data requests; the request number at issue corresponds with Staff data request 2-28.

C. Unitil Energy Systems, Inc.

On December 11, 2012, Unitil Energy Systems, Inc. (UES) filed a motion pursuant to Puc 203.08 for confidential treatment of information provided in responses to data requests 1-20, 1-43, 1-45 and 2-28. The requests sought copies of all correspondence between UES and its parent company, Unitil Corporation, regarding storm preparation and actions taken (1-20), all communications between UES and its parent regarding mutual assistance and crew allocation (1-43), and all other communications between UES and its parent regarding other restoration matters (1-45). Data request 2-28 requested copies of system circuit maps by Area Work Center.

1. Personal Contact Information

UES stated in its motion that it seeks protection from public disclosure of the e-mail addresses and phone numbers of the individuals sending, receiving or referenced in the e-mails provided in response to data requests 1-20, 1-43 and 1-45. UES contended that it does not release such information, and that public disclosure could interfere with the ongoing operations and business activities of the company, particularly during emergencies such as storms or other outage-related events, if members of the public were to use this information to contact employees directly, thereby distracting them from their assigned tasks. UES reasoned that its interest in maintaining the working hierarchy of its Incident Command Structure during emergency events is critical to the success of its storm response. UES further noted that it provides a number of ways for customers to contact the company directly, including toll-free phone numbers, e-mail, and Twitter, and that these numbers and addresses are advertised frequently and in various formats, especially during emergency events. UES also redacted internal web and system file addresses for security reasons, noting that it has not redacted the substance of the e-mails submitted, and therefore the portion of the responses for which it seeks

confidential treatment is relatively minor and allows for public examination of UES's communications during the October 2011 snowstorm event.

2. System Diagram Information

In addition, UES sought protection from disclosure for the circuit diagrams provided in response to data request 2-28, contending that the diagrams should be protected from public disclosure because they provide specific details concerning UES's energy infrastructure, including the precise location of key facilities and detailed information as to how the UES's distribution system is designed and configured. UES submitted that it does not disclose this information to the public in the normal course of business and, further, that it maintains internal procedures to protect such information from unauthorized or accidental disclosure. UES claimed that protection of the detailed electric distribution and transmission infrastructure information included on the diagrams is critical to the safe and reliable operation of the electric system in UES's service territory and the safety of the public in general. UES further stated that public disclosure of such information would be contrary to the public interest and would represent an undue risk to public safety, as extreme care must be exercised to protect sensitive information regarding the location of critical electric distribution infrastructure from unnecessary public disclosure, in this age of increased vigilance against potential acts of terrorism and sabotage.

Finally, UES contended that its request for a protective order is not inconsistent with the public disclosure requirements of RSA 91-A or with Puc 203:08, which recognizes that confidential, commercial or financial information may be appropriately protected from public disclosure pursuant to an order of the Commission. UES stated that the Commission has recognized that the determination whether to disclose confidential information involves a balancing of the public's interest in full disclosure with the countervailing commercial or private

interests for non-disclosure. In this instance, UES maintains that a protective order of limited scope would appropriately balance the interests of the company and its employees, with the public's need to access public records.

III. COMMISSION ANALYSIS

New Hampshire's Right-to-Know Law provides each citizen the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception, invoked here by Granite State, PSNH, and UES for "confidential, commercial, or financial information." RSA 91-A:5, IV. We have had numerous occasions to rule on motions for confidential treatment in the context of confidential, commercial, and financial information regarding utilities and their affiliates. *See e.g., EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,280 (October 25, 2011), *Northern Utilities, Inc.*, Order No. 25,330 (February 6, 2012); *Public Service Co. of New Hampshire*, Order No. 25,332 (February 6, 2012); and *National Grid USA et al.*, Order No. 25,370 (May 30, 2012).

Following the approach used in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) in determining whether the information identified by the movants should be deemed confidential. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know Law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced

against any privacy interests in non-disclosure. *Id.* We will analyze each category of information for which protective treatment is requested in turn.

The movants each argue that the information for which they seek protective treatment contains clear privacy concerns for their employees and constitutes “confidential, commercial, or financial information” under RSA 91-A:5, IV. They further maintain that disclosure will not provide the public with information about the conduct or activities of the Commission or other parts of New Hampshire state or local government. We are in agreement that there are clear privacy interests in the personal cell phone numbers, personal e-mail addresses and home addresses of the employees and the contractor workers of Granite State and UES. We are also persuaded that the internal security procedure information provided by Granite State regarding safety of employees should not be disclosed. We further find that the system circuit maps submitted by PSNH and UES contain certain sensitive commercial information that warrants protection. We find that public disclosure of the information will not materially advance the public’s understanding of the Commission’s analysis of electric utility performance during the October 2011 snowstorm event and, moreover, could result in commercial harm or pose legitimate security risks.

In balancing the interests of the companies in protecting their information with the public’s interest in disclosure, we conclude that the information should not be disclosed and we grant the confidential treatment requested. To the extent that information for which protection is granted herein is released or made public by any movant at a later time, that information would no longer be subject to protective treatment. *See* Puc 203.08(1). Consistent with Puc 203.08(k), our grant of confidential treatment is subject to our on-going authority, on our own motion, on

the motion of Staff, or on the motion of any member of the public, to reconsider our determination.

Based upon the foregoing, it is hereby

ORDERED, that the requests for confidential treatment of the redacted portions of responses to data requests 1-20, 1-43, 1-45 and 2-28 filed by Granite State, PSNH and UES are hereby GRANTED.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of January, 2013.



Amy L. Ignatius
Chairman



Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director