

**STATE OF NEW HAMPSHIRE**  
**before the**  
**PUBLIC UTILITIES COMMISSION**

Public Service Company of New Hampshire ) Distribution Rate Case )	Docket DE 09-035
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**Staff Motion to Compel Compliance with Order No. 25,037 and  
Responses to Staff Data Requests 4-13 and 5-7**

Now comes the Staff of the Public Utilities Commission and says:

**I. Failure To Comply With Order No. 25,037 in Respect to “Minor” Officers**

1. *Public Service Company of New Hampshire*, Order No. 25,037 (October 30, 2009) ruled on a motion for confidential treatment of the compensation paid to officers and directors of Public Service Company of New Hampshire (the Company) provided in response to New Hampshire Code of Administrative Rules Puc 1604.01(a)(14) (rate case filing requirements). The motion also requested a waiver of the requirement to file such information with respect to so-called “minor” officers, i.e., assistant secretaries, assistant comptrollers, assistant treasurers and the Principal Engineer. In pertinent part, the ruling:

A. denied the waiver request with respect to the “minor” officers (see page 4);

B. ordered the Company to refile the compensation information with the Commission in such form that the specified compensation information can be identified with each officer (see page 6); and

C. consistent with the Commission’s approach in *Public Service Company of New Hampshire*, Order No. 24,333 (2004) at 5,<sup>1</sup> granted confidential treatment of the “minor” officer compensation required to be filed with the Commission as follows:

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<sup>1</sup> That order provided that the total compensation paid to officers whose compensation was not already public information, which included the “minor” officers, would be made public in the aggregate. *Id.*

“the compensation paid to minor officers, as a group shall be filed in a manner that identifies the number of minor officers and aggregate compensation, separately stated for 2007 and 2008.” Page 10-11.

The Commission noted in footnote 5 that there is no need to protect the compensation levels for individual minor officers because it was requiring public disclosure of aggregate data only, for the minor officers as a group.

2. In response to Order No. 25,037, on November 9, 2009, the Company filed a confidential document that listed the compensation information for the “minor” officers in the aggregate.<sup>2</sup>

3. Despite requests by Staff, the Company has refused to file on a confidential basis the compensation information in such form that the specified compensation information can be identified with each “minor” officer as required by Order 25,037.

4. On information and belief, the Company takes the position that under Order No. 25,037 only the aggregate compensation information is required to be listed in the confidential document. Apparently, the Company relies at least in part on the provision in the third section of the order, quoted above, stating that “the compensation paid to minor officers, as a group shall be filed in a manner that identifies the number of minor officers and aggregate compensation, separately stated for 2007 and 2008” and the subsequent provision stating “the compensation paid to non-minor officers shall be disclosed in a manner that identifies the individual officer by name, title and total compensation, separately stated for 2007 and 2008.” *Id.* at 10-11.

5. The Company’s interpretation is incorrect. In its order the Commission identified the purpose of the different sections of the order by stating, in relevant part, “the second section rules on a threshold question of compliance with rate case filing requirements regarding officer and director compensation and stock ownership, and *the third section deals with the requests for confidential treatment.*” *Id.* at 2 (emphasis added). In the second section of the order, the Commission, “except

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<sup>2</sup> In the redacted, publicly available version of the document, the Company also listed aggregate compensation information for the “minor” officers.

to the extent of the limited waiver granted in this order regarding the stock ownership of minor officers, order[ed] the Company to re-file the director and officer compensation and stock ownership information in such form that the information can be identified with each director and officer.” *Id.* at 6. This was, according to the order, the means by which the Company would comply with the requirements of Puc 1604.01. *Id.* In the third section of the order, the Commission then ruled upon the Company’s requests for confidential treatment, while specifically noting that it was doing so on the presumption that the Company would comply with the filing requirements of Puc 1604.01. *Id.* at 7.

6. The Company’s current interpretation of the Commission’s order takes the provisions regarding filing of aggregated and individual data out of context and overlooks the fact that they are contained in the third section of the order stating what information is to be treated as confidential or non-confidential. The second section of the order is clear that the specified compensation information must be filed with the Commission in such form that it can be identified with each officer, including, but not limited to, “minor” officers. However, in accordance with the third section of Order No. 25,037, in the case of “minor” officers, only the aggregate compensation is to be made public. This is consistent with the Commission’s approach in *Public Service Company of New Hampshire*, Order No. 24,333 (2004) at 5 as set forth in the third section of Order No. 25,037 and with footnote 5 of Order No. 25,037. In prior dockets, including DE 03-200 and DE 06-028, the Company has willingly filed the required compensation information even for “minor” officers and it has no valid basis for refusing to do so in this case.

## **II. Failure To Respond Adequately to Staff Data Request 4-13 in Respect to “Minor” Officers**



7. Staff Data Request 4-13, issued on October 23, 2009, requested the Company to “provide compensation and stock ownership data for 2006, 2007 and 2008 for all officers and directors in a form similar to that provided by the Company in its DE 06-028 filing and sufficient to allow comparisons between the data for 2006-2008 and the data for 2004 and 2005 provided in DE 06-028.”

8. The Company submitted a redacted and confidential response to Staff Data Request 4-13. The cover letter to the confidential response submitted on December 11, 2009 states that the response is similar to material supplied to the Commission in response to Order No. 25,037. In fact, the compensation data for 2007 and 2008 for seven “minor” officers is aggregate compensation information as is the compensation data for 2006 in respect to “Officers 4-17.”

9. The compensation data filed in DE 06-028 provided individualized compensation data for the Company’s officers, including “minor” officers. Accordingly, the response to Staff 4-13 is inadequate in that it provides aggregate, and not individualized, compensation data for the seven “minor” officers for 2007 and 2008 and “Officers 4-17” for 2006. In any event, Order No. 25,037 did not establish any limitations on the scope of discovery regarding compensation.

### **III. Failure To Respond to Staff Data Request 5-7**

10. Staff Data Request 5-7, issued on November 25, 2009, referenced compensation data attachments to the letter from the Company to Debra Howland dated November 9, 2009 and the response to Staff data request 4-13, and requested the Company to “provide an un-aggregated breakdown of compensation for each of the 7 minor officers in the same way the compensation information is presented for the other officers.”

11. The Company has not yet responded to Staff Data Request 5-7, but assuming its response is consistent with its filing of officer and director compensation information pursuant to

Puc 1604.01(a)(14) (rate case filing requirements) and its response to Staff Data Request 4-13, the answer will not be responsive to the question asked.

WHEREFORE, Commission Staff requests that this Commission:

A. Order the Company to (1) comply with Order No. 25,037 by filing a revised document to include individualized compensation information in respect to “minor” officers as required by the Order; (2) respond to Staff Data Request 4-13 by providing individualized compensation data in respect to “minor” officers for 2007 and 2008 and “officers 4-17” for 2006 ; and (3) answer Staff Data Request 5-7 in a responsive manner by providing the individualized compensation data as requested, all to be accomplished within 7 days of the decision on this motion; and

B. Grant such other relief as may be just.

Respectfully submitted,

Dated: December 22, 2009



Edward N. Damon, Esq.  
Director, Legal Division  
Appearing on behalf of Commission Staff

#### **CERTIFICATE OF SERVICE**

The undersigned certifies that on December 22, 2009, a copy of this motion was served upon all parties on the Commission’s service list for this docket by electronic mail pursuant to Puc 203.11.



Edward N. Damon, Esq.  
Director, Legal Division