

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Least Cost Integrated Resource Plan

Docket No. DE 10-261

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S MOTION FOR
PROTECTIVE ORDER RE: DETAILED FIVE YEAR CAPITAL BUDGETS

Pursuant to RSA 91-A:5,(IV)(Supp.) and N.H. Code Admin. Rules Puc § 203.08, Public Service Company of New Hampshire ("PSNH" or the "Company") hereby requests protective treatment for the attachment to a response to a data request in the above-captioned matter. The information is confidential financial information and should be protected from public disclosure under RSA 541-A:5, IV.

In support of its Motion for Protective Order, PSNH states as follows:

1. On April; 29, 2011, the Office of Consumer Advocate (OCA) issued OCA data request Set No. 2, Q-OCA-004 which states:

Question:

Please provide a detailed breakdown supporting each amount provided in the Confidential portion of the response to OCA 01-033.

The Company provided information responsive to OCA-02, Q-OCA-004 on May 20, 2011 to the Staff and the OCA, and, pursuant to Puc § 203.08(d), stated that it would be filing a Motion for Protective Order for the attachment to OCA-02, Q-OCA-004.

2. On June 14, 2011, the Commission denied an earlier Motion for Protective Order with respect to the attachments to Data Requests OCA-01, Q-OCA-033 and TECH-01, Q-TECH-003 (hereinafter "OCA 1-033") on the

basis that the information for which protective treatment was sought was generalized information that was not confidential. Order No. 25,234. The attachments to these two earlier data requests supplied totals for “capital budgets for the 2011-2015 period, on an annual, non-itemized, whole-dollar basis, for its Schiller, Newington, and Merrimack generating units, and, as provided in the corrected attachment submitted on April 15, its combined hydroelectric generating units.” *Id.* at 7. The Commission found that “[t]he Company has not adequately demonstrated that actual competitive harms would result from disclosure of these general, non-itemized figures to third parties.” *Id.* at 8. The Commission also noted that in its objection to PSNH’s Motion, “TransCanada rejects the Company’s position that disclosure of its 2011-2015, non-itemized, capital budgets for its generation units would somehow enable third parties to predict the Company’s planned outage and maintenance schedules, as the figures do not specify the type of investments to be made in each plant, or whether such investments would implicate an outage.” *Id.*

3. Unlike the five year totals provided in the earlier attachments, the attachment to OCA-02, Q-OCA-004 (hereinafter “OCA 2-004”) is a twelve page listing of each distinct capital project and the projected dollar expenditure for each project by the Company, listed by generating unit and by year. The attachment to OCA 2-004, therefore, contains the very detailed, itemized capital budget information to which TransCanada referred in its earlier objection to PSNH’s motion for protective order. Release of this information would enable third parties to determine the duration and timing of outages at each generating unit, and the type of equipment and components needed for the outage. As described in detail below, if this information were publicly available, it would cause competitive harm to the Company and ultimately, its customers.

4. Standards for Granting Protective Treatment. Before granting confidential treatment, the Commission must use a three step process in order to weigh the importance of keeping the record public with the harm from disclosure of confidential information.

In determining whether commercial or financial information should be deemed confidential and private, 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). First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure; when commercial or financial information is involved, this step includes a determination of whether an interest in the confidentiality of the information is at stake. 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 nondisclosure. *Id.* Docket No. DG 08-048, Order No. 25,014, slip op. at 3, *cited in* Order No. 25,254 (June 14, 2011).

“Under administrative rule Puc §204.06 [predecessor to Puc§ 203.08], the Commission considers whether the information, if made public, would likely create a competitive disadvantage for the petitioner; whether the customer information is financially or commercially sensitive, or if released, would likely constitute an invasion of privacy for the customer; and whether the information is not general public knowledge and the company takes measures to prevent its' dissemination.” *Re Northern Utilities, Inc.*, 87 NH PUC 321, 322, Docket No. DG 01-182, Order No. 23,970 (May 10, 2002).

5. Competitive Disadvantage. The detailed five-year capital budgets, which the Company produced in response to OCA 2-4, provide a year-by-year, line-by-line breakdown of anticipated expenditures the Company's major generation units. If disclosed to third parties, this information could result in significant competitive harm to PSNH and its customers. Specifically, public disclosure of this detailed financial information would put PSNH at a competitive disadvantage when seeking bids from the limited number of potential vendors capable of performing the specified projects

because those vendors would know which projects are planned for each year and how much PSNH expects to spend on each of those projects. The confidential and competitive bidding process that PSNH relies upon to capture cost-effective services would be significantly undermined which could ultimately lead to increased rates for the Company's customers. The Commission has previously recognized the confidential status of this very type of information, and there is no justifiable reason why it should deviate from those prior orders. See Docket No. DE 09-091, Order No. 25,060, slip op. at 16-19 (December 31, 2009)(Commission granted protective treatment to PSNH's five year capital and O & M budgets).

The U.S. Environmental Protection Agency has recently granted confidential status to similar information provided by the Company. In a response to a request for detailed information regarding its generating fleet, the Company produced information regarding its estimates of budgeted repairs of its generation units, which is similar to its five year capital planning information at issue here. In granting protective treatment to this information, the EPA ruled that if such financially sensitive information is released to a third party, it has the potential to result in significant competitive harm to PSNH and thus its customers.¹ Specifically, the EPA ruled that the release of this information has the potential to provide some vendors with an unfair advantage and enable them to adjust their pricing and undercut competitors who might not have access to the detailed financial

¹ "After careful consideration of PSNH's arguments, I find that the Company has demonstrated that significant competitive harm would likely result from publicly releasing certain of the information claimed to be CBI....Exemption 4 of the FOIA protects those who are required to submit commercial or financial information to a Government agency from the competitive disadvantages that may result from public disclosure. The Company has adequately shown that the information is highly sensitive to its commercial operations and that the release of the information would place it at a competitive disadvantage, thereby causing substantial harm to its competitive position...." Regional Counsel Carl F. Dierker, US Environmental Protection Agency Final Determination, November 10, 2010.

projections.² In brief, the release of this type of detailed financial information has the potential to undermine the Company's ability to obtain the most competitive prices from the marketplace which ultimately is to the detriment of the Company's customers.

The information would also put PSNH at a competitive disadvantage with respect to replacement power needed during the future capital projects delineated in the five year capital budgets listed in OCA 2-004.. The scope of work in any given year and projected estimates of costs indicate the length of time to perform the work. An experienced professional in the energy supply and/or plant operations field would be able to decipher with reasonable accuracy the outage duration. This knowledge, coupled with scheduled maintenance information at PSNH plants available from past Energy Service reconciliation proceedings, will provide wholesale suppliers of energy the knowledge to leverage their replacement energy bid prices at higher levels than would otherwise result from a blind bidding process.

6. Financially and Commercially Sensitive Information. The information at issue is both financially and commercially sensitive information, and, importantly, the release of this information would serve no public purpose related to the conduct of the government. *See, Re: 2011-2012 CORE Electric Energy Efficiency and Gas Energy Efficiency Programs*, Order 25,189 at 20 (December 30, 2010) (finding that disclosure of competitor's pricing terms with a utility does not "enlighten[s] the public about our determination of whether the proposed energy efficiency programs achieve the specific goals of RSA Chapter 374-F articulated below and whether they should be approved").

² *Id.* at 4.

While the public has a broad interest in how PSNH is planning for future capital improvements to its major generating stations, release of that information does not promote the public's understanding of the PUC's conduct regarding its review of the Company's Least Cost Plan. The purpose of the Least Cost Plan is not to approve or disapprove particular capital projects but rather to conduct a broader review of how the Company has planned to meet its resource needs. There is no public benefit to the release of a line-by-line drilling down into the projected costs of various repair projects--projects which have been identified by those engineers with the necessary expertise to ensure the safe and reliable operation of the plants.

7. Company Confidential Information. PSNH takes appropriate protective measures within the Company to ensure that the detailed capital budgets are treated as confidential business information, including labeling and segregating the information and strictly limiting the distribution of the information to only those individuals with an absolute need to know the information. These financial analyses have not been voluntarily disclosed outside of PSNH nor has any legal body required the production of this document or directly comparable documents despite document production requests filed by litigants in various forums. PSNH has a privacy interest in not publicly disclosing the specific capital projects and projected costs for its generating station in the next five years. The public has an interest in knowing how PSNH is planning for the future; however, the individual projects and their cost have little to do with the workings of the Commission.

8. Balancing of Interests. The limited benefits of disclosing the information outweigh the significant and potentially real and costly harm done by disclosing the information. PSNH would be put at a disadvantage with respect to potential bidders on these projects because the data contained in the response strongly indicates what price PSNH is willing to pay for work

on each project. The prices in the response will constitute the floor of any bids that are received. If this occurred, customers would ultimately be harmed as it could adversely impact the cost of projects put into service and recovered through rates. The sophisticated players in the energy markets will discern the timing and length of future outages based upon the projects to be completed during annual outages and their costs. The non-confidential responses to the earlier data requests adequately address for all parties the OCA's inquiry of "how the budget was derived, and the process PSNH undertakes in determining which investments to make." Data Request OCA 1-033.

9. Distribution. Certain intervenors in this proceeding, TransCanada Power Marketing Limited and TransCanada Hydro Northeast, Inc. ("TransCanada"), Granite Ridge Energy L.L.C. ("Granite Ridge"), New England Powder Generators Association ("NEPGA") and Freedom Energy Logistics, LLC /Halifax America Energy Company, LLC ("FEL/HAEC") are participants or represent participants in the power supply market at the wholesale and/or retail level. It has been the Commission's practice in the past to grant protective treatment to confidential commercial information such as power supply and coal supply contracts and to not require dissemination of that information to intervenors who are competitive suppliers. In *Re Kearsarge Telephone Company*, Docket No. DT 07-027, a competitive local access telecommunications provider, SegTel, Inc., sought access to competitive information from the petitioning incumbent local telecommunications carriers. Order No. 24,820, 92 NH PUC 441, 443 (2007). In that decision the Commission stated, "It is well-established in the context of administrative proceedings that due process is a flexible concept, varying with the nature of the governmental and private interests that are implicated. *Matthews v. Eldridge*, 424 U.S. 319, 334 (1976)." *Id.* It is

reasonable and permissible to restrict access to this information for the competitive supplier intervenors in this proceeding. *See*, RSA 541-A:32, III.

10. Conclusion. As described above, PSNH has a clear privacy interest in preventing public disclosure of this detailed budget information. The public interest in disclosure is to “inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted.” Order No. 25,234, slip op. at 2. In order to know how the Commission evaluates PSNH’s least cost planning, the public does not need to know when and how much it will cost to replace a roof at one of the Schiller Station generating units. The public’s need to know the workings of government should be satisfied with the fact that this confidential operational information may come before the Commission in some fashion in order to determine the adequacy of PSNH’s planning process.

WHEREFORE PSNH respectfully requests the Commission issue an order preventing the public disclosure of attachment to the response to Data Request OCA-02, Q-OCA-004, to allow the document to be reviewed by an environmental intervenor at PSNH’s headquarters following execution of a nondisclosure agreement but not taken from the Company’s premises, to not require dissemination of the attachment to TransCanada, Granite Ridge, NEPGA and FEL/HAEC, and to order such further relief as may be just and equitable.

Respectfully submitted,
Public Service Company of New Hampshire

July 15 2011
Date

By: Gerald M. Eaton
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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.

July 15 2011
Date

Gerald M. Eaton
Gerald M. Eaton

**Public Service Company of New
Hampshire**
Docket No. DE 10-261

Data Request OCA-02

**Dated: 04/29/2011
Q-OCA-004
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Witness: William H. Smagula
Request from: Office of Consumer Advocate

Question:

Please provide a detailed breakdown supporting each amount provided in the Confidential portion of the response to OCA 01-033.

Response:

Attached is a list of capital budget items that support the forecasted annual capital budget provided in OCA 01-033. This list includes Merrimack, Newington and Schiller Stations, as well as the Hydro facilities for the years 2011 through 2015.