

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Default Energy Service Rate for 2013

Docket No. DE 12-292

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
REVISED MOTION FOR PROTECTIVE ORDER REGARDING
THE REVIEW OF PSNH'S 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" or the "Company") hereby requests protective treatment of certain information in its Review of Costs: PSNH Generation ("Report") prepared pursuant to the requirements of Order No. 25,380 and submitted on December 12, 2012 in Docket No. DE 12-292. The Report contains a review of various issues affecting PSNH's generation fleet. For purposes of this motion, PSNH seeks protective treatment of certain operating and maintenance ("O&M") information in the Report. A redacted, public version of the Report has been submitted, along with an unredacted, non-public version, consistent with Puc 201.04. PSNH asserts that the specific information in the Report is confidential commercial information eligible for protection from public disclosure under RSA 91-A:5. In support of its Motion for Protective Order, PSNH says the following:

1. In Order No. 25,380 issued June 27, 2012 in Docket No. DE 11-215, the Commission required that PSNH undertake:

A systematic review of operation, materials and capital costs, including personnel costs, associated with the operations of its fossil fuel plants given the low capacity factors of these units in recent years and the current expectation of them remaining low over the next few years. The review should also include any costs that are billed to the fossil plants

such as engineering and regulatory support. PSNH shall provide details regarding its review and analysis at the time it makes its next energy service rate filing. The Company shall also provide actual cost calculations for calendar year 2011 and develop an updated forecast of costs and expenses associated with the operation of its fossil fuel plants for calendar years 2012 and 2013 for the Commission's review and evaluation. For the units at Merrimack Station, the directive is limited to non-Scrubber related operations and other costs.

2. In response to this directive, PSNH prepared a comprehensive Report covering the items identified by the Commission and submitted the Report on December 12, 2012 in Docket No. DE 12-292, PSNH's "next energy service rate filing." As originally produced, PSNH intended that the Report be treated as a business document reflecting PSNH's business analyses of certain generating plant information. On that basis, PSNH submitted a motion asserting that the entire document should not be disclosed. During the December 18, 2012 hearing in Docket No. DE 12-292, the Commission requested that PSNH work with the Staff and the Office of Consumer Advocate ("OCA") to determine appropriate redactions to the document so that a public version of the document could be produced. Consistent with that request, and in acknowledgement of the concerns raised by the Staff and OCA, as well as the Commission, PSNH made certain redactions in the document and sought input from the Staff and OCA on the appropriateness of the redactions. PSNH notes that other than the redactions, there is no change in this submission from the Report submitted on December 12, 2012.

3. On December 24, 2012, Conservation Law Foundation ("CLF") objected to PSNH's original motion for confidential treatment of the entire Report. On December 26, 2012, PSNH objected to CLF's filing on the basis that CLF is not a party to Docket No. DE 12-292 and had no right to file an objection to PSNH's motion. On December 28, 2012, the

Commission issued Order No. 25,448 in this docket and concluded, in relevant part, that because PSNH was evaluating the scope of its request for confidential treatment, it would be premature to rule upon PSNH's motion, or CLF's objection. The Commission stated that unless a revised motion was submitted with 14 days of the date of the Order – by January 11, 2013 – it would then rule upon the pending motions. Consistent with Order No. 25,448, PSNH provides the instant motion relating to the redacted version of the Report. In that PSNH provides this motion and the accompanying redacted Report, PSNH requests to withdraw its prior motion for confidential treatment. PSNH also notes that the Commission had stated it would keep the entire Report confidential pending the submission of a redacted Report. Because PSNH is now submitting a redacted Report, PSNH requests that any Commission order relating to this motion also provide that the original submission that the unredacted original version of the report continue to be treated kept confidential.

4. As to the specific request for confidentiality, before granting confidential treatment, the Commission must determine if there is a privacy interest of PSNH's to protect. *See Public Service Company of New Hampshire*, Order No. 25,167 (Nov. 9, 2010) at 3-4. Then the Commission determines if there is a public interest in disclosure. *Id.* If both of these steps are met then the Commission will use a balancing test in order to weigh the importance of keeping the record public with the harm from disclosure of the material for which protection is requested. *Id.*

5. 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 distinct competitive 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. This disadvantage will persist as long as PSNH is supplying Default Energy Service and as long as PSNH owns generation. The Commission has recently acknowledged that other energy suppliers compete with PSNH and that those suppliers have an interest in protecting competitive information about their operations. *See Electric Utility Customers*, Order No. 25,439 (Dec. 7, 2012) at 5-9. Thus, PSNH submits that its privacy interest in similar competitively sensitive 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.

6. In that PSNH has 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." *See Public Service Company of New Hampshire*, Order No. 25,167 at 3. 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 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. 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.

7. 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.

8. As noted above, the specific O&M information that PSNH seeks to protect from public disclosure would provide limited benefits to the public in determining how the Commission conducts its activities. Disclosure, however, would substantially harm PSNH because it would reveal to PSNH's competitors 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.

9. In closing, PSNH also notes that during the December 18, 2012 hearing in this docket, the Commission requested certain other information and changes to the Report. Such changes could not be incorporated prior to the January 11, 2013 deadline set by the Commission in Order No. 25,448. PSNH is currently addressing the Commission's requests and will provide a supplement to Report as soon as it is able. At that time, should there be new or amended information PSNH believes is worthy of confidential treatment, an appropriate request will be submitted to the Commission.

WHEREFORE, PSNH respectfully requests that the Commission:

1. Permit PSNH to withdraw its December 12, 2012 motion for confidential treatment of the entire Report and require that the unredated original version of the Report remain confidential;
2. Issue an order preventing the public disclosure of the portions of the Report described above, and identified in the accompanying submission; and
3. Order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

1/11/13
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.

1/11/13
Date


Matthew J. Fossum