

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 08-113

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Default Energy Service Rate

Order on Motions for Confidential Treatment

ORDER NO. 24,920

December 12, 2008

I. PROCEDURAL HISTORY

On September 12, 2008, Public Service Company of New Hampshire (PSNH) filed its proposed energy service rate for calendar year 2009 together with the testimony of Robert A. Baumann. Based on its preliminary calculations, PSNH's initial estimate of the rate was 10.51 cents per kWh as compared to the current energy service rate of 9.57 cents per kWh. PSNH stated that the proposed energy service rate had increased due to: (1) higher forecasted fuel and purchased power costs; (2) increases in the cost of compliance with the New Hampshire Renewable Portfolio Standard, RSA Chapter 362-F; and (3) new costs associated with the Regional Greenhouse Gas Initiative (RGGI), RSA 125-O:19-:28. In advance of the December 4, 2008 hearing, on December 2, 2008, PSNH updated its proposed energy service rate to 9.92 cents per kWh based on current market information.

The Commission issued an Order of Notice on September 22, 2008, and held a prehearing conference on October 6, 2008. On September 19, 2008, the Office of Consumer Advocate (OCA) filed a letter with the Commission stating that it would participate in the docket on behalf of residential ratepayers pursuant to RSA 363:28.

On October 23, 2008, in response to several data requests, PSNH filed Motions for Protective Orders seeking confidential treatment of information concerning: (1) coal supply contracts and bilateral power contracts; (2) major maintenance schedules; (3) fuel cost data; (4) Regional Greenhouse Gas Initiative (RGGI) auction details; and (5) acquisition of renewable energy certificates (RECs). PSNH, through the testimony of Elizabeth Tillotson, PSNH's Technical Business Manager for its Generation Division, and comments by Attorney Eaton, provided additional arguments for the confidential nature of some of this information at hearing on December 4, 2008.

II. PSNH'S REQUESTS FOR CONFIDENTIAL TREATMENT

In its motions, PSNH argues that responses to a number of data requests should be kept confidential and not disclosed to the public pursuant to RSA 91-A:5, IV (Supp.) and N.H. Code of Admin. Rules Puc 203.08. PSNH claims that the information contained in each of its responses and described in its motions is "highly sensitive commercial and financial information." PSNH states that the information contained in each of its responses is not general public knowledge and that PSNH has taken measures to prevent its dissemination. PSNH argues that for each category of information described in its motions, the limited benefits of disclosing the information are outweighed by the harm done by disclosing the information.

A. Coal Supply and Bilateral Power Contracts (Staff Set #1, Questions #11 and #17)

PSNH requests confidential treatment of information on existing coal contracts including sulfur content, price per ton, contracting party and whether the coal is for use at the Merrimack or Schiller plants or both. PSNH also seeks confidential treatment of information on existing purchase power contracts including contracting party, date of execution, duration, quantity and price. PSNH points out that pricing terms for fuel suppliers and power suppliers have

traditionally been kept confidential. *See, EnergyNorth Natural Gas, Inc. dba KeySpan Energy Delivery New England*, Order No. 24, 167, 88 NH PUC 221, 226 (2003). According to PSNH, release of this information would put it at a disadvantage in negotiating future coal and power supply contracts. Coal and power supply contracts are generally kept confidential to protect both buyer and seller. If terms of these contracts are disclosed to the public, PSNH believes that fewer suppliers will want to negotiate contracts. Fewer suppliers means less competition in the supply market. PSNH observes that the Commission granted confidential treatment of this coal and power supplier information in the previous energy service docket. *See, Public Service of New Hampshire*, Order No. 24,814 (December 28, 2007).

B. Planned Major Maintenance Schedule (Staff Set #1, Question #8)

PSNH seeks confidential treatment of information on maintenance schedules for all its generating facilities. PSNH indicates that it submits data concerning the timing, duration and nature of major maintenance activities at its generating facilities, to the Independent System Operator for New England (ISO-NE). PSNH notes that the information filed with ISO-NE is kept confidential and not shared with the public or with other market participants. According to PSNH, if this information were released power suppliers would know that PSNH needed supplemental power during certain periods and that knowledge could harm PSNH's bargaining position when negotiating contracts for power supply. PSNH further claims that disclosure of the information could also harm PSNH customers directly in the form of higher replacement power costs. Finally, PSNH points out that the Commission granted a motion to protect similar data from disclosure in the previous energy service docket. *See, Public Service of New Hampshire*, Order No. 24,814 (December 28, 2007).

C. Fuel Cost Data (Staff Set #1, Questions #1 and #9)

In this motion, PSNH seeks to protect information on the projected price of coal, wood, oil and natural gas, as well as information on how much fuel supply is under contract and how much will be purchased in the market for its generating facilities. PSNH points out that pricing terms with power suppliers and fuel suppliers have traditionally been kept confidential. *See, EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England, Order No. 24,167, 88 NH PUC 221, 226 (2003).*

PSNH claims that disclosure of fuel costs, even in the aggregate, may have a negative effect on its ability to supply power at the lowest reasonable cost. While acknowledging that it has supplied this type of data in the past without treating it as confidential, PSNH asserts that confidential treatment is now needed.

D. RGGI Carbon Dioxide Allowance Auctions (Staff Set #1, Question #4)

PSNH seeks to protect information on its participation in the September 2008 RGGI auction, including the number and price of allowances purchased, as well as information concerning PSNH's participation in future RGGI allowance auctions. PSNH alleges that the operator of the auctions, RGGI, Inc., conducts the auction process in a confidential manner and that information as to the specific allowance bids by price or quantity purchased by specific auction participants is not made public. According to PSNH, all details as to the transactions of allowances in the secondary market are also kept strictly confidential.

PSNH claims that confidentiality is needed because the RGGI allowance market is limited and the auction operator is trying to avoid market manipulation. PSNH states that market manipulation may increase the cost of allowances it must acquire which in turn will harm PSNH customers. PSNH notes that pricing terms with power suppliers and fuel suppliers have similarly

been protected from disclosure. *See, EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, Order No. 24,167, 88 NH PUC 221, 226 (2003).

E. Acquisition of Renewable Energy Certificates (Staff Set #1, Question #2)

PSNH requests protection from disclosure for detailed information concerning its acquisition of Renewable Energy Certificates (RECs).¹ The information PSNH seeks to protect includes existing contract terms for the purchase of RECs and anticipated future purchases, as well as the terms of current and future sales of RECs from PSNH facilities. PSNH argues that pricing terms with power and fuel suppliers have traditionally been protected, and that REC contracts should be treated similarly. PSNH claims that disclosure of the terms of existing REC purchases or anticipated purchases will place it at a competitive disadvantage in negotiating future contracts with REC suppliers.

III. COMMISSION ANALYSIS

The Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See*, RSA 91-A:4, I. The statute contains an exemption, invoked here, for “confidential, commercial, or financial information.” RSA 91-A:5, IV. The Commission’s rule on requests for confidential treatment, N.H. Code of Admin. Rules Puc 203.08, is designed to facilitate the implementation of the statute as it has been interpreted by the courts. In most cases, a balancing test is used to determine whether confidential treatment should be granted. *See, e.g., Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997).

¹ RSA 362-F:3 requires each electricity supplier to obtain certain quantities of RECs by class, or else make alternative compliance payments pursuant to 362-F:10.

A. Coal Supply and Bilateral Power Contracts

The information concerning PSNH's coal supply and bilateral power contracts is similar to information for which the Commission has granted confidential treatment in the past. *See, EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, Order No. 24,167, 88 NH PUC 221, 226 (2003), and *Public Service of New Hampshire*, Order No. 24,814 (December 28, 2007). In weighing the potential harm to PSNH and its customers of disclosure, against the public's right to access to this information, we find that the balance favors confidential treatment of these contracts. Therefore, we will grant PSNH's request to treat the coal supply and bilateral power contract price information contained in its responses to Staff Set #1, questions #11 and #17 as confidential and not subject to disclosure.

B. Planned Major Maintenance Schedule for PSNH Facilities

The information concerning PSNH's planned maintenance schedule is similar to information for which the Commission has granted confidential treatment in the past. *See, Public Service of New Hampshire*, Order No. 24,814 (December 28, 2007). PSNH alleges that if power suppliers know the schedule of PSNH's needs for supplemental power its bargaining position will be undermined. We find the potential harm to PSNH and its customers of disclosure outweighs the public's right to access to this information. Therefore, we will grant PSNH's request to treat its planned maintenance schedule, as contained in its response to Staff Set #1, question #8, as confidential and not subject to disclosure.

C. Fuel Cost Data

PSNH seeks exemption from disclosure for fuel cost data, while acknowledging that it has not requested confidential treatment of this data in the past. The data contained in the PSNH responses at issue in this motion reflects aggregated monthly coal prices, aggregated monthly

wood and oil prices, and NYMEX monthly natural gas prices. The response also contains ISO-NE monthly forward market power prices for on-peak and off-peak hours. Finally, the responses contain copies of broker provided NEPOOL forward market prices.

We have protected specific pricing terms of supply contracts in the past, but it has not been our practice to protect aggregated cost data. PSNH claims that even aggregated cost data may place it at a competitive disadvantage. PSNH also argues that information on the quantity of fuel under contract and the quantity still to be purchased puts it at a competitive disadvantage when negotiating future power purchases. Some of this fuel cost data is available from public sources and we also note that much of this information was contained in the PSNH filing made on December 2, 2008, for which PSNH did not request confidential treatment. We are not persuaded that the aggregated fuel cost information contained in PSNH's responses to Staff set #1, questions #1 and #9, if made public, would create a competitive disadvantage that could harm PSNH or its customers. We therefore deny PSNH's request for confidential treatment of this information.

D. RGGI Carbon Dioxide Allowance Auctions

PSNH seeks confidential treatment of information concerning PSNH's participation in the September 25, 2008 RGGI auction, including how many allowances PSNH acquired, as well as its plans for participation in the December 2008 RGGI auction of carbon dioxide (CO₂) emission allowances.

RGGI is the first mandatory market-based effort in the United States to reduce greenhouse gas emissions. Ten Northeastern and Mid-Atlantic states, including New Hampshire, will cap and then reduce CO₂ emissions from the power sector. *See*, RSA 125-O:19-:29. The first RGGI auction was held on September 25, 2008. Following that auction, the independent

market monitor issued a report on the auction results in aggregated fashion, i.e., by groups of bids and type of bidder. The market monitor's report did not reveal information on specific bidders or the number of allowances that identified bidders purchased, but did disclose various aggregated data including minimum, maximum and average bid prices. See, October 16, 2008, Memo and Appendix from the market monitor, available to the public at www.rggi.org/docs/Auction_1_PostSettlement_Report_from_Market_Monitor.pdf.

PSNH argues that disclosure of its past bidding history and its future needs for auctioned allowances would facilitate market manipulation that could lead to higher costs for allowances. The information PSNH seeks to protect is similar to information for which the Commission has granted confidential treatment in the past. We have protected bid information and specific pricing terms of power supply agreements in order to protect the competitive bidding process for electric utilities soliciting power supplies. See, *Unitil Energy Systems, Inc.*, Order No. 24,676 (September 29, 2006); and *Granite State Electric Company*, Order No. 24,412 (December 22, 2004).

In this case, we must balance the public's right to disclosure of PSNH's specific bidding and purchase activity against PSNH's right to withhold such information in order to avoid potential market manipulation and additional costs to its ratepayers. We find that PSNH's interest in withholding specific bid and allowance purchase information outweighs the public's right to know this information. Further, we believe the aggregated data expected to be disclosed by the market monitor following each RGGI allowance auction² will provide an adequate opportunity for the public to scrutinize the overall allowance auction activity. We will therefore

² The expected public release of information after each RGGI auction is described at http://www.rggi.org/docs/Post_Auction_Data_Release.pdf.

grant confidential treatment to the RGGI allowance auction information contained in PSNH's response to Staff set #1, question #4.

E. Acquisition of Renewable Energy Certificates

PSNH seeks confidential treatment of information concerning its purchase and sale of RECs. This information is similar to information for which the Commission has granted confidential treatment in the past. *See, Public Service of New Hampshire*, Order No. 24,814 (December 28, 2007). PSNH argues that specific knowledge of the price and terms of its REC purchases and sales will harm its ability to negotiate favorable contracts in the future. We find the potential harm to PSNH and its customers of disclosure of the REC purchase and sale contracts outweighs the public's right to disclosure. Therefore, we will grant PSNH's request to treat its REC contract information, as contained in its response to Staff set #1, question #2, as confidential and not subject to disclosure.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's motions for confidential treatment are **GRANTED** in part and **DENIED** in part as described in this order; and it is

FURTHER ORDERED, that the confidential treatment granted here is subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or other member of the public, to reconsider this determination if circumstances warrant.

By order of the Public Utilities Commission of New Hampshire this twelfth day of
December, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary