

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 12-295

POWER NEW ENGLAND, LLC

**Petition for Review of the Reasonableness of Certain Charges of Public Service Company
of New Hampshire for Services to Competitive Suppliers**

**Order Regarding PSNH's Motions to Compel and NAPG's Motion for Confidential
Treatment**

ORDER NO. 25,528

June 25, 2013

I. PROCEDURAL HISTORY

The Commission opened this docket by an Order of Notice dated November 21, 2012 to investigate whether the Commission should review the reasonableness of certain tariff charges that Public Service Company of New Hampshire bills to competitive electric suppliers (CEPs). The charges subject to this docket are (1) a \$5.00 "selection charge" which is assessed when a customer switches to or from PSNH's default energy service, (2) the "billing and payment service charge" which PSNH charges on a \$0.50 per bill rendered basis for the billing and payment services PSNH provides to any CEP which has opted for consolidated billing services, and (3) the "collection services charges" which is billed at a 0.252% of total monthly receivable dollars pursuant to written agreements with CEPs.

The Office of Consumer Advocate (OCA) filed a letter of participation in this docket on December 13, 2012. The following parties were granted intervention: North American Power

and Gas, LLC (NAPG), the Retail Energy Supply Association (RESA) and Electricity NH d/b/a ENH Power (ENH Power).¹

Discovery ensued. On May 13, 2013, PSNH filed a motion to compel NAPG to respond to data requests PSNH 1-10, 1-22, 1-23 and 1-33 and a motion to compel ENH Power to respond to PSNH 1-27. ENH Power filed an objection to PSNH's motion to compel on May 23, 2013. Also on May 23, 2013, NAPG filed an objection to PSNH's motion to compel responses to PSNH 1-10, 1-22 and 1-23 but withdrew its initial objection to respond to PSNH 1-33. With its filing, NAPG provided a response to PSNH 1-33 with a motion for confidential treatment of that response.²

PSNH also filed a motion to suspend the procedural schedule until such time as the Commission ruled on the pending motions to compel on May 13, 2013. On May 17, 2013, the Commission issued a secretarial letter which suspended the procedural schedule until the Commission issued an order on PSNH's motions to compel.

II. MOTIONS TO COMPEL, MOTION FOR CONFIDENTIAL TREATMENT AND COMMISSION ANALYSIS

A. PSNH's Motion to Compel NAPG to respond to PSNH 1-10, 1-22 and 1-23

PSNH moved that NAPG respond to PSNH 1-10 which asked NAPG to describe the costs it would incur, both initially and on a continuing basis, if it did not use PSNH's billing and payment services. PSNH asked NAPG for an analysis of what it would cost NAPG to conduct billing and payment on its own or by using a third party. In support of its motion, PSNH said that the scope of the docket included the impact of PSNH's tariff charges billed to CEPs in light of the potential impact of such charges on the competitive market. PSNH said that the responses

¹ For additional procedural background in the docket and the Commission's action on prior motions, *see* Order No. 25,486 (March 5, 2013).

² NAPG also filed a change of appearance on May 23, 2013.

to PSNH 1-10 are likely to produce relevant evidence because, to the extent that third parties offer billing and payment services, the costs of such services may shed light on the reasonableness of PSNH's charges. PSNH Motion/NAPG at 3-4. PSNH argued that, to the extent NAPG has information about the costs of performing its own billing and payment services, there would be no substantial burden on NAPG to require it to produce the information. PSNH said that if the answer to PSNH 1-10 is confidential, NAPG could provide a response pursuant to a non-disclosure agreement. *Id.* at 5.

In its objection, NAPG said that it does not use non-utility billing and payment services in New Hampshire either on its own or using non-utility third parties, and that current New Hampshire law precludes NAPG from issuing single bills that would include both generation and distribution charges. NAPG Objection at 7. NAPG argued that it is not appropriate to compel NAPG to perform hypothetical inquiries into both start up and ongoing costs under two separate billing and two separate payment scenarios, and requested that the Commission deny PSNH's motion to compel a response to PSNH 1-10. *Id.*

We have reviewed PSNH's motion and NAPG's objection. We agree with NAPG that it should not have to speculate on the costs of performing billing and payment services either on its own or using a third party in New Hampshire, because NAPG does not currently perform those services itself or have those services performed by a third party. While we will not require NAPG to provide a response to PSNH 1-10 as written, we believe that if NAPG performs these services itself or through a third party in other jurisdictions in which it operates, information about the costs of those services would be relevant to this proceeding. Therefore, to the extent that NAPG performs billing and payment services for its business operations in other jurisdictions, or uses third-party billing and payment services for its business operations in other

jurisdictions, we direct NAPG to provide a response to PSNH 1-10 with an analysis of the costs for the services so provided. NAPG will have 14 calendar days from the date of this order to provide any responsive analysis to PSNH.

PSNH 1-22 is similar to PSNH 1-10 except that it asks NAPG to provide an analysis of its costs to perform collection services either on its own or through a third party. PSNH made the same arguments in support of its motion to compel and NAPG objected on the basis that it did not perform itself, or use a third party to perform, collection services in New Hampshire. We will not require NAPG to create an analysis of the costs of performing collection services in New Hampshire, however, to the extent that NAPG performs its own collection services in other jurisdictions in which it operates, or uses a third party to provide collection services in other jurisdictions in which it operates, we direct NAPG to provide a response to PSNH 1-22 with an analysis of the cost for the services so provided. NAPG will have 14 calendar days from the date of this order to provide a responsive analysis to PSNH.

PSNH 1-23 asks NAPG to provide information regarding its profit and expense for each PSNH customer by customer class, to describe what portion of the expense is attributable to the charges that are the subject of this docket, and how such components compare on a per customer basis for NAPG customers who are distribution customers of other New Hampshire utilities. PSNH argued that knowing the extent to which PSNH's charges impact the business of NAPG will help the Commission determine whether PSNH's charges have any consequential impact on the competitive market in New Hampshire, and that the information is relevant because there were claims by parties in this docket that the PSNH charges "impede the development of the competitive market." PSNH Motion/NAPG at 5-6. In its Motion, PSNH added that the question was similar to a question Staff 1-1 to which NAPG had provided a response.

In its objection, NAPG said that PSNH 1-23 was an attempt by PSNH to divert the investigation from whether PSNH's charges against competitive suppliers were just and reasonable into an inquiry regarding the development of the competitive market in New Hampshire. According to NAPG, PSNH's view is that so long as its charges do not significantly harm competitive suppliers, the charges should stand. NAPG Objection at 4. NAPG further claimed that PSNH 1-23 was excessively burdensome, especially in light of the unlikelihood that the responses would lead to admissible evidence. *Id.* at 5. Finally, NAPG pointed out that Staff 1-1 did not ask for any information related to profitability but only to overall expenses. *Id.* at 6.

At the outset, we note that PSNH's motion reflects the mistaken assumption that the purpose of this docket is to review whether PSNH's charges to CEPs have impeded the development of the competitive market. Although Power New England, LLC made that claim in the filing that led to this docket, and that claim is recited in the Order of Notice opening this docket, the scope of this docket is to investigate whether PSNH's charges for customer selection, billing and collection are just and reasonable. We will not expand it to examine the effects of the charges on the development of the competitive market, or the effect of the charges on the profitability of competitive suppliers. We have reviewed PSNH's motion and NAPG's objection in the context of the scope of this docket and based upon our review we deny the motion to compel because the response to the question will not likely lead to the discovery of admissible evidence.

B. Motion for Confidential Treatment

Though PSNH's motion included a request to compel NAPG to answer PSNH 1-33, NAPG subsequently provided a response, accompanied by a Motion for Confidential Treatment. The information over which NAPG seeks protection includes pricing terms from NAPG's

electronic data interface (EDI) vendor and “brief text” which compares the EDI vendor’s pricing terms to the PSNH charges. In its motion, NAPG asserts that the information is confidential business information that could harm the competitive positions of NAPG and its EDI vendor. NAPG seeks limited distribution of the PSNH-NAPG 1-33 response to: 1) the Commission and the OCA; 2) PSNH counsel and in-house regulatory but not operational or marketing personnel and only after execution of a confidentiality agreement; and 3) competitive supplier outside counsel but no in-house personnel of any type, but only after execution of a confidentiality agreement. NAPG also requests that the information be protected “indefinitely” or if that is not possible, for at least five years.

Regarding NAPG’s motion for confidential treatment, RSA 91-A:5, IV states, in relevant part, that records of “confidential, commercial or financial information” are exempted from disclosure. *See, Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) at 2. In determining whether commercial or financial information should be deemed confidential, we first consider whether there is a privacy interest that would be invaded by the disclosure. *Id.* at 2-3. Second, when a privacy interest is at stake, the public’s interest in disclosure is assessed. *Id.* at 3. 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.* This is similar to the Commission’s administrative rule on requests for confidential treatment. *See, N.H. Code Admin. Rules Puc 203.08; see also, Unitil Corp. and Northern Utilities, Inc.*, at 3.

The Commission has previously found contractual terms with private vendors to be exempt from disclosure. *See, e.g., Public Service Company of New Hampshire*, Order No.

25,234 (June 14, 2011) at 5. We agree that disclosure of private contractual terms could result in a competitive disadvantage to both NAPG and its vendor. As such, disclosure would invade the privacy interests of NAPG and its EDI provider. Further, there is no indication that disclosure of the information would inform the public about the workings of the Commission. In balancing the interests of NAPG and its EDI provider in protecting information against the public's interest in disclosure, we find that the privacy interests in non-disclosure outweigh the public interests in disclosure and, therefore, we grant NAPG's motion.

We also grant the limitations on disclosure requested by NAPG. In cases involving competitive interests, we have at times provided for more restrictive dissemination to competitors, even if they have executed confidentiality agreements, and will do so herein. Consistent with Puc 03.08(k), our grant of this motion 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. That being the case, we will not set a formal sunset date for protection of the EDI information.

C. PSNH Motion to Compel ENH Power to Respond to PSNH 1-27

In PSNH 1-27, PSNH asked ENH Power to provide the same information on profitability that it requested of NAPG. PSNH requested information regarding ENH Power's profits and expense for each PSNH customer by customer class along with a description of what portion of the expense is attributable to the PSNH charges that are the subject of this docket and how that compares on a per customer basis with ENH Power customers who are customers of other New Hampshire distribution utilities. PSNH argued that the information requested is relevant because of the claims by parties in the docket that PSNH's charges "inhibit the competitive market in New Hampshire." PSNH Motion/ENH Power at 3. PSNH stated that knowing what effect

PSNH's charges had on a supplier's profitability would be helpful in determining the impact on the competitive market. *Id.* at 4.

In its objection, ENH Power said that it disputed PSNH's attempt to redefine the scope of the issues in this docket. According to ENH Power, "the central question is whether PSNH's supplier service charges are just and reasonable charges that do not exceed PSNH's actual costs of supplying the services that are not already recovered from its distribution customers." ENH Objection at 2. ENH Power asserted that the information PSNH requested in PSNH 1-27 is sensitive commercial or financial information that is protected from disclosure pursuant to RSA 91-A:5, a provision of New Hampshire's Right to Know law. ENH Power also argued that PSNH failed to explain how ENH Power's profits and expenses provide information to the reasonableness of PSNH's charges or the development of the competitive marketplace in New Hampshire. *Id.* at 3. In addition to PSNH seeking protected sensitive financial information, and failing to meet its burden to demonstrate the relevancy of the information requested, ENH Power stated that the information which PSNH seeks is not readily available to ENH Power because it does not maintain the detailed level of information requested in PSNH 1-27. *Id.* at 4-5. ENH Power requested that the Commission deny the motion to compel a response to PSNH 1-27.

We have reviewed the PSNH's motion and ENH Power's objection. We agree with ENH Power that the information sought is sensitive financial and commercial information which is not subject to disclosure under RSA 91-A:5 and that given the scope of the docket a response to PSNH 1-27 is not likely to lead to evidence regarding whether the charges PSNH assesses to competitive suppliers are just and reasonable. On the foregoing basis, we deny PSNH's motion to compel ENH Power to respond to PSNH 1-27.

III. PROCEDURAL SCHEDULE

The procedural schedule for the remainder of the proceeding shall be as follows:

Testimony of Staff/Intervenors	July 24, 2013
Discovery on Testimony	August 7, 2013
Responses to Discovery	August 21, 2013
Technical Session	Week of September 2, 2013 at 9:00 a.m.
Hearing on the merits	Week of September 16 at 10 a.m.

Staff is directed to work with the parties to identify suitable dates for the technical session and hearing on the merits for the Commission's consideration.

Based upon the foregoing, it is hereby

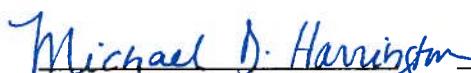
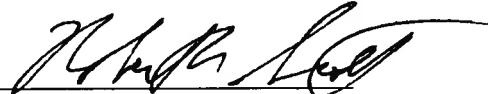
ORDERED, that PSNH's motion to compel NAPG to respond to PSNH 1-10 and 1-22 is GRANTED in part as discussed in this Order; and it is

FURTHER ORDERED, that PSNH's motion to compel NAPG to respond to PSNH 1-23 is hereby DENIED; and it is

FURTHER ORDERED, that PSNH's motion to compel ENH Power to respond to PSNH 1-27 is hereby DENIED; and it is

FURTHER ORDERED, that NAPG's motion for confidential treatment is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of June, 2013.

 _____ Amy L. Ignatius Chairman	 _____ Michael D. Harrington (KRS) Commissioner	 _____ Robert R. Scott Commissioner
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Attested by:



Debra A. Howland
Executive Director