

DE 16-822

STATE OF NEW HAMPSHIRE

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OFFICE OF CONSUMER ADVOCATE

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August 3, 2017

Ms. Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Docket No. DE 16-822
Public Service Company of New Hampshire
Default Energy Service Rate Proceeding
Confidentiality Motion

Dear Ms. Howland:

In light of today's filing by Public Service Company of New Hampshire (PSNH) in the above captioned-proceeding, I write briefly to clarify the position of the Office of the Consumer Advocate (OCA) in opposition to the pending motion of PSNH for confidential treatment of certain aspects of the record of the June 22, 2017 hearing. Today's letter from PSNH takes exception to the OCA's choice of verbs in its previously filed opposition to the motion and suggests that if the OCA disagreed with confidential treatment of the information in question the OCA should have sought disclosure prior to the hearing.

RSA 363:28, VI requires parties to Commission proceedings to provide the OCA with a copy of all confidential information submitted in adjudicative proceedings. The OCA therefore lacks a reason, and arguably even standing, to request pre-hearing disclosure of confidential materials *because the OCA has them already.*

Once such material finds its way into the record of an adjudicative proceeding, however, the OCA has an interest in assuring that the letter and spirit of RSA 91-A are followed – i.e., that only material truly worthy of confidential treatment under RSA 91-A:5, IV remains shrouded in secrecy. Primarily, the OCA believes the interests of its constituency – residential utility customers – are well-served by maximum public access to the information that is hashed over in the Commission's hearing room because this increases the likelihood of a ratepayer-favorable result on the merits. Secondly, as an instrumentality of government itself, the OCA wishes to

maximize public scrutiny of its own work – but must do so in light of the OCA’s obligation under RSA 363:28, VI to treat as confidential that which the Commission deems confidential.

The rules of the Commission governing the treatment of potentially confidential information reflect a similar solicitude for the letter and spirit of RSA 91-A, including an implicit acknowledgement that in some circumstances material provided to the Commission and the OCA is sufficiently sensitive to warrant being shielded from public disclosure at the discretion of the agency. In promulgating these rules, the Commission adopted procedures that laudably promote efficiency by avoiding the need to resolve RSA 91-A issues immediately, every time a utility shares information that might be confidential. *See* N.H. Code Admin. Rules Puc 201.06 (“routine” filings, in default service proceedings and otherwise) and Puc 203.08(d) (responses to data requests in adjudicative cases).

At the risk of using more verbs to which PSNH will take exception, it is the OCA’s view that a utility does the Commission and ultimately the public a disservice when it makes strategic use of these procedures in connection with matters that no one could reasonably describe as routine. Few matters in the era of restructured electric utilities have been more controversial, for both the PUC and the OCA, than the contract by which PSNH is obliged to purchase many years of energy, capacity and renewable energy certificates from the biomass plant in Berlin. It is in everyone’s best interests – those of the Commission, the OCA, PSNH and even Burgess Biopower – for the public to be able to scrutinize fully the extent to which the Commission’s efforts to limit ratepayer exposure to above-market costs have been successful.

The OCA thanks the Commission for its indulgence and promises that the above is the last word from our office on the pending confidentiality motion.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Kreis', written in a cursive style.

D. Maurice Kreis
Consumer Advocate

cc: Service List