

DE 01-023

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Complaint of Ann and Tim Guillemette

Order Granting Motion to Compel Discovery

O R D E R N O. 23,767

August 30, 2001

This proceeding arises under RSA 365:1 and involves a formal service-related complaint filed by two customers of Public Service Company of New Hampshire (PSNH), Ann and Tim Guillemette of Bedford. On June 28, 2001, the New Hampshire Public Utilities Commission (Commission) entered Order No. 23,734, denying PSNH's motion to dismiss the proceeding and determining that the next phase of the case would involve inspection of the Guillemettes' premises wiring and installation of a voltage meter there. As required by Order No. 23,734, the complainants have advised the Commission in writing that they will permit their wiring to be inspected. Now pending is the complainants' motion to compel discovery pursuant to Puc 204.04.

According to the complainants, on or about July 2, 2001 they transmitted to PSNH the following data request:

Identify and provide a copy of all documents of any kind or wherever found relating to the following Entry dated 12/31/96 by PSNH employee Bert Guimond in the PSNH Customer Information System notes

(Attachment I to PSNH Memorandum):

I went to field check service and found electrician working at meter socket. He also checked connections inside and found nothing wrong. Called stand-by (Levesque & Chalbeck) to replace connectors at weatherhead and at pole. The electrician also reported to me that one of the phases was only partially installed at meter socket, stand-by will also look at the line side connectors in the meter socket. Gary will return all connectors that are replaced to my office in case we have a claim from customer at a later date. The customer reports she has had several appliances, TV, light bulbs . . . damaged.

Complainants' Motion to Compel at 1. The complainants further contend that (1) PSNH has not responded to this data request, nor to a follow-up inquiry made by complainants' counsel, and (2) PSNH's response to this data request may be dispositive of the issues in this proceeding.

PSNH filed a written objection to the motion on August 15, 2001. According to PSNH, it advised the complainants in writing on August 3, 2001 that the Company would not be providing a response because the proceeding has not advanced to the discovery stage and, in fact, may never reach such a phase. In support of this position, PSNH relies upon the Commission's discussion in Order No. 23,734 with

regard to how the Commission intends to proceed with this case. Specifically, PSNH invokes the Commission's references to the appropriate next steps in this docket, which, as noted above, involve inspections and monitoring at the complainants' premises. According to PSNH, this is in contrast to the typical Commission proceeding in which a full procedural schedule is entered that makes specific provisions for discovery. In the view of PSNH, the inspection and monitoring ordered by the Commission in this case may render discovery, including the data request transmitted by the complainants, unnecessary.

Upon a review of the motion papers we conclude that no hearing is necessary on the motion and that the motion should be granted. We add a key condition and caveat, however.

PSNH correctly points out that the instant case deviates significantly from the typical proceeding, in which a schedule is approved that makes specific provisions for discovery. It does not necessarily follow from this, however, that discovery is precluded. The applicable rule, Puc 204.04, imposes no such limitation in discovery. Indeed, the only reference to procedural schedules in the rule instructs parties that responses to data requests must be made within

ten days "or in accordance with a procedural schedule established by the commission." Puc 204.04(c)(1).

Moreover, the rule explicitly requires a party to interpose objections to data requests within four days of their receipt, absent which any objection is deemed waived. Puc 204.04(d). Here, the motion papers reveal that PSNH ignored the complainants' data request for more than a month. PSNH's deemed waiver of objection would, in itself, justify the granting of the complainants' discovery motion.

However, we agree with PSNH that it was implicit in Order No. 23,734 that the next phase of this proceeding would be a very limited one, focused on ascertaining the relevant facts about the current situation at the complainants' premises. In these circumstances, it was not unreasonable for PSNH to view a discovery request focused elsewhere as at variance with the Commission's expressed decision to conduct a specific inquiry that may well be dispositive. PSNH erred by not making its view known to the complainants via a timely objection to the data request.

Had PSNH not waived objection to the data request, and assuming that complainants would have followed up on the objection with the instant motion to compel, we likely would

have required the Company to provide the documents in question. The statement of the complainants' position, filed by them on June 4, 2001, makes clear that the PSNH document referenced in the data request forms the central basis of their contention that PSNH knew as early as 1996, but did not disclose to the complainants, that a poor meter connection existed on the premises and was a principal cause of voltage fluctuations experienced by the complainants. In these circumstances, it is clear that a request for additional PSNH records related to this document is not the prelude to a discovery barrage, but rather comprises a focused effort by the complainants to get to the bottom of their case.

We include this observation because we want to make clear that, in granting the motion to compel, we do not intend to cause the parties to engage in additional discovery prior to the completion of the initial investigations discussed in Order No. 23,734. PSNH is correct in its view that we intended to defer such a broad-based inquiry to a later stage, as necessary. Therefore, we admonish the parties that no additional discovery is appropriate unless specifically approved by the Commission, until such time as a full procedural schedule is entered. In other words, requiring PSNH to respond to the complainants' data request should not

be viewed as license to embroil any party, including Commission Staff, in further discovery efforts at this stage of the proceeding.

Based upon the foregoing, it is hereby

ORDERED, that the motion of complainants Ann and Tim Guillemette to compel discovery is **GRANTED**, and it is

FURTHER ORDERED, that no additional discovery be had in this proceeding until further Order of the Commission.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary