

DE 03-200

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Delivery Service Rate Proceeding

Order on Motions for Confidential Treatment

O R D E R N O. 24,333

June 11, 2004

I. INTRODUCTION AND SUMMARY

Pending in this rate proceeding before the New Hampshire Public Utilities Commission (Commission) are six motions for confidential treatment filed by Public Service Company of New Hampshire (PSNH) pursuant to RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.06.

The first motion, submitted on December 29, 2003, concerns the compensation paid by PSNH to certain of its officers, data PSNH was required to submit as part of its initial rate case filing in this docket. The second motion, submitted on February 5, 2004, involves information about the revenue received by PSNH from two large industrial customers, Fraser Papers, LLC (Fraser) and Wausau Papers of New Hampshire, Inc. (Wausau). PSNH provided this information in discovery. The third motion, submitted on February 17, 2004, concerns information relating solely to revenue received by PSNH from Wausau. The fourth motion, submitted on March 15, 2004, concerns customer billing information regarding another large industrial customer, Winchester Mill. Winchester Mill is the successor to American

Tissue Mills in Winchester, N.H. The fifth motion, submitted on May 19, 2004, concerns an OCA data request that sought the number of customers taking Rate B, their potential peak load, Wausau's potential demand and the percentage of the potential Rate B load that was attributable to Wausau. The sixth motion, also submitted May 19, 2004, concerns a Staff data request that seeks monthly billing information from the Crotched Mountain Ski Area. It was jointly filed by PNSH and Crotched Mountain Ski Area. The Commission has received no pleadings in opposition to any of the six motions.

II. LEGAL STANDARD

The New Hampshire 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 exception, invoked here, for "confidential, commercial or financial information." RSA 91-A:5, IV. In *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997), the New Hampshire Supreme Court provided a framework for analyzing requests to employ this exception to shield from public disclosure documents that would otherwise be deemed public records. There must be a determination of whether the information is confidential, commercial or financial information "and whether disclosure would constitute an invasion of privacy." *Id.* at 552 (emphasis in original, citations omitted). "An

expansive construction of these terms must be avoided," lest the exemption "swallow the rule." *Id.* at 552-53 (citations omitted). "Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553 (citations omitted).

Our applicable rule is designed to facilitate the employment of this balancing test. We require a motion for confidentiality to contain (1) the specific documents or portions thereof for which confidential treatment is sought, (2) reference to statutory or common law authority favoring confidentiality, (3) "[f]acts describing the benefits of non-disclosure to the public, including evidence of harm that would result from disclosure to be weighed against the benefits of disclosure to the public," and certain evidence. N.H. Admin. Rules, Puc 204.06(b). The evidence must go to the issue of whether the information "would likely create a competitive disadvantage for the petitioner." *Id.* at(c).

III. EXECUTIVE COMPENSATION DATA

In support of its December 29, 2003 motion concerning information about executive compensation, PSNH contends that public disclosure of compensation information as to certain executives would constitute an invasion of privacy. At issue are persons PSNH characterizes as "minor officers", specifically, four assistant controllers, two assistant secretaries, one assistant treasurer and the principal engineer. PSNH points out that, unlike that of other, higher officials of PSNH, compensation information for these officials is not otherwise publicly disclosed via federal securities filings. PSNH furnished information about the compensation of its executives because it is required by rule to do so when instituting a rate proceeding. See Puc 1604.01(a)(14).

According to PSNH, the benefits of publicly disclosing the information in question are limited because (1) PSNH's parent company, as opposed to the Commission, determines the salaries in question, *cf. Mans v. Lebanon School Board*, 112 N.H. 160 (1972) (requiring disclosure of salaries of certain public employees), and (2) some of the minor officers in question devote only a small part of their time to their duties as officers. Further, according to PSNH, the Commission can determine a reasonable level of executive compensation for ratemaking purposes in the

aggregate, without revealing what PSNH characterizes as sensitive personal information.

We recognize that the public has an interest in the information because compensation has a direct bearing on the rates paid by customers. While PSNH correctly points out that the Commission does not set or approve executive salaries at PSNH, the question of whether customers, through rates, are funding executive salaries that are inappropriately high is historically a matter of public concern. The benefit of disclosure of some of this information outweighs the benefit of nondisclosure.

We believe that the public interest is best served as follows: 1) compensation to officers above those identified in the motion are already made public in federal securities filings and will continue to be publicly available; 2) the total compensation paid to the enumerated "minor officers" shall be made public in the aggregate; and 3) the specific amount of compensation paid to each of these minor officers shall be made available, under protective order, to all parties and Staff. If any of them feel it is necessary to pursue the compensation levels in testimony or the hearing room they may do so, with appropriately redacted public versions of their filings and protected sections of transcripts as the Commission evaluates the evidence. This is consistent with our treatment of similar

requests in the past. See *Pennichuck Water Works, Inc.*, 86 NH PUC 764 (2001); *Union Telephone Company*, 81 NH PUC 525 (1996). Therefore, we will grant in part and deny in part PSNH's motion for non-disclosure of executive compensation information.

IV. SPECIAL CONTRACT AND DISCOUNTED RATE DATA

PSNH's February 5, 2004 motion concerns PSNH's responses to data requests designed to assess the appropriateness of pro forma adjustments to test-year expenses arising out of PSNH's special contracts with two paper manufacturers. The first data request sought the projected revenues associated with the Fraser special contract for the 12 months following the end of the test year. The second data request asked PSNH to combine the proposed pro forma adjustments associated with the Fraser special contract and the Wausau special rate and determine how PSNH's other ratepayers would have fared in the absence of the special contracts.

In support of its motion, PSNH notes that RSA 378:19 requires the terms of the special contract and special rate to be publicly available. Thus, according to PSNH, public disclosure of the revenue data associated with these two customers, when combined with data made public under RSA 378:19, would allow their competitors to derive information about the two paper companies' energy usage - information that is competitively sensitive in the energy-intensive paper industry. PSNH notes

that the Commission accorded confidential treatment to customer-specific revenue information in the proceedings that led to the approval of the special contract with Fraser and the special rate provided to Wausau.

With respect to the response to the first of the two questions - i.e., the specific data as to the revenues associated with each paper company - we agree with PSNH that the benefits of public disclosure do not outweigh what could be significant competitive harms suffered by Wausau and Fraser in the event of disclosure. These two companies have a very strong interest in not disclosing to competitors data related to their energy usage, and the data itself discloses little with respect to the impact of the special contracts on the revenue requirement imposed on PSNH's other customers.

However, the same cannot be said of the response to the second question, which sets forth the extent to which the aggregate revenue associated with each company has contributed to PSNH's stranded cost recovery. This data goes to the heart of whether approvals of the Fraser special contract and the rate specific to Wausau were of benefit to other PSNH customers - which, in turn, bears significantly on whether pro forma adjustments to PSNH's revenue requirements are appropriate to account for the rate discounts given these two customers. Moreover, it is not possible to use the stranded cost

contribution figures to derive information about either paper company's energy usage. Thus, the privacy interest is extremely limited and the public's interest in disclosure is strong. In these circumstances, we deny the PSNH motion to the extent it seeks confidential treatment of the aggregate stranded cost contribution information.

V. REVENUE FROM INDUSTRIAL CUSTOMERS

Next, we take up PSNH's February 17, 2004 motion. This motion concerns (1) the responses to two specific questions about the lost delivery charge revenue resulting from the discount given to Wausau, as reported by PSNH witness Stephen Hall, and (2) page 8A of the Schedule 1 attachment to Mr. Hall's testimony.¹ The latter document reports revenues associated with Rate BW, of which Wausau is the only customer. In support of its February 17, 2004 motion, PSNH makes the same arguments it provided in connection with the Wausau data at issue in the February 5, 2004 motion. We conclude that, for the same reasons we granted the previous motion in part, this motion should be granted in its entirety. In so doing, we will accord confidential treatment to Page 8A of the Schedule 1 Attachment to Mr. Hall's testimony, which PSNH inadvertently submitted without a request for confidential treatment when the testimony was first

¹ Though incorrectly referenced in the February 17, 2004 motion as appearing as an attachment to the testimony of PSNH witness Robert Baumann, the document is actually an attachment to Mr. Hall's testimony.

filed. We see no reason to harm the customer because of the oversight of PSNH. Page 8A, therefore, is now accorded confidential treatment.

The fourth motion requests protective treatment for PSNH's response to Staff data request Set NSFT-03, Q Staff-150 regarding the date the Winchester Mill went back into service, and the monthly billing determinants and revenues from the in-service date forward. PSNH argued, again, that this type of customer specific, commercially sensitive information has been protected in the past and should be protected in this case. We agree and for the reasons previously stated, we will grant the request.

The fifth motion seeks confidential treatment for PSNH's response to OCA data request Set OCA-04, Q OCA-011 regarding the number of customers in the area, in addition to Wausau, taking service under Rate B, their total potential peak load, Wausau's potential demand and the percentage of that demand of the total potential Rate B load. The concern, here again, is with the information regarding Wausau's potential demand. PSNH argues this is customer specific, commercially sensitive information that should be protected. We will grant the request for the reasons previously stated.

The final motion concerns Staff Data Request Set NSTF-05, Q Staff-235, which seeks monthly billing information from the date Crotched Mountain Ski Area opened to the present. PSNH asserts that this is commercially sensitive, customer specific information not disclosed by PSNH or the ski area and is routinely protected by the Commission. For the reasons previously stated, we will grant the request to protect this customer specific information.

Based upon the foregoing, it is hereby

ORDERED, that the December 29, 2003 motion of Public Service Company of New Hampshire for confidential treatment of certain executive compensation information is hereby GRANTED IN PART AND DENIED IN PART; and it is further

ORDERED, that the February 5, 2004 motion of Public Service Company of New Hampshire for confidential treatment of certain documents related to two industrial customers is hereby GRANTED IN PART AND DENIED IN PART as described more fully herein; and it is further

ORDERED, that the February 17, 2004 motion of Public Service Company of New Hampshire for confidential treatment of certain documents related to Wausau Papers of New Hampshire is hereby GRANTED; and it is further

ORDERED, that the March 15, 2004 motion of Public Service Company of New Hampshire for confidential treatment of

certain documents related to the Winchester Mill is hereby GRANTED; and it is further

ORDERED, that the March 19, 2004 motion of Public Service Company of New Hampshire for confidential treatment of certain documents related to Rate B customers is hereby GRANTED; and it is further

ORDERED, that the March 19, 2004 motion of Public Service Company of New Hampshire and Crotched Mountain Ski Area for confidential treatment of certain documents related to the Crotched Mountain Ski Area is hereby GRANTED; and it is further

ORDERED, that the determinations granting confidential treatment herein be subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff or any member of the public to reconsider such determinations in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this eleventh day of June, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Michelle A. Caraway

Assistant Executive Director