

DE 05-157

**GRANITE STATE ELECTRIC COMPANY, NEW HAMPSHIRE ELECTRIC
COOPERATIVE, PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE AND UNITIL
ENERGY SYSTEMS**

Petition for Approval of 2006 “Core” Energy Efficiency Programs

Order on Requests for Confidential Treatment

ORDER NO. 24,612

April 6, 2006

I. PROCEDURAL BACKGROUND

The New Hampshire Public Utilities Commission (Commission) issued its order on the merits of this proceeding, which concerns energy efficiency programs funded by customers through the System Benefits Charge (SBC) on their bills, on March 17, 2006 (Order No. 24,599). The SBC is a component of electric rates collected from all customers and is authorized pursuant to RSA 374-F:3, VI and RSA 374-F:4, VIII. The order approved a settlement agreement entered into among the parties and thereby approved the 2006 programs. Still pending is a series of requests for confidential treatment pursuant to RSA 91-A:5, IV.

On December 6, 2005, Public Service Company of New Hampshire (PSNH) and New Hampshire Electric Cooperative, Inc. (NHEC) filed separate motions pursuant to N.H. Code Admin. Rules Puc 204.06 for confidential treatment of certain responses to data requests propounded by the Commission Staff. The requests sought the total annual amount of SBC funds paid by each electric utility’s 50 largest commercial and industrial customers for the period from June 1, 2002 through December 31, 2005, the corresponding amount of dollars received through the Core programs by each customer and the projected lifetime kilowatt-hours savings for each customer. Granite State Electric Company d/b/a National Grid (National Grid) and

Unitil Energy Systems, Inc. (Unitil) filed similar motions on the following day. The Commission received no pleadings in opposition to the four motions.

On April 5, 2006, NHEC filed a petition for a protective order, advising that it had received a request from Staff that asked for an update, covering the period through March 2006, of the information covered by the previous requests. Staff made such a request of all four utilities, all of which responded with the requested information in various formats. This order is intended to resolve the question of what, if any, of this information is entitled to confidential treatment under RSA 91-A:5, IV, the applicable provision of the Right-to-Know Law.

II. SUMMARY OF THE MOTIONS

PSNH seeks a determination that the documents containing this information be declared confidential *in toto*. According to PSNH, because the SBC is assessed at a specified level of mil's per kilowatt-hour, public disclosure of an individual customer's SBC payments would allow others to derive each customer's total electric consumption. According to PSNH, it is the utility's policy to maintain the privacy of this data, as well as data concerning SBC funds received and lifetime kilowatt-hours saved.

PSNH points out that it is bound by N.H. Code Admin. Rules Puc 2004.08, which precludes electric distribution utilities like PSNH from disclosing customer-specific data (i.e., name, address, telephone number, usage data and payment information) without specific authorization from the affected customer. According to PSNH, this rule codifies longstanding Commission policy about such data that should be applied here.

In the view of PSNH, the fact that the commercial and industrial customers at issue here have chosen to participate in energy efficiency programs indicates that energy is a

significant part of their operating costs. Thus, PSNH reasons, the data, including historic electric consumption, is competitively sensitive to these businesses. It is further PSNH's position that public disclosure of the information would make commercial and industrial customers reluctant to participate in the Core energy efficiency programs in the future, thus depriving the public of the benefit of the energy savings obtained through the programs. PSNH points out that the Commission adopted this reasoning in an order entered in 1997. *Re Public Service Company of New Hampshire*, Docket No. DR 97-183, Order No. 22,788, 82 NH PUC 808 (November 18, 1997).

The motion filed by NHEC in December 2005 makes a request that is slightly different from that of PSNH. NHEC asks the Commission to make public a redacted version of the documents that withholds the identity of the customers on the list but discloses the industry of the customers that actually participated in the Core programs

Similar to PSNH, NHEC notes that it maintains the confidentiality of member-specific information in its own records. According to NHEC, while the degree of potential harm varies with the business in question, all its commercial and industrial members that operate in a competitive environment suffer at least some harm by the public disclosure of their operating costs, including costs related to energy. NHEC further contends that in order to maximize member participation and thus the overall public benefits from the Core programs, participating members must be willing to disclose sensitive details of their business operations, including such details as expansion plans, and methods of production or operation. NHEC is concerned that disclosure of this information will impair its ability to enroll members in the programs

prospectively. NHEC also draws the Commission's attention to its 1997 determination recognizing these issues.

According to NHEC, there is no public benefit to disclosing publicly the amount of SBC funds paid by identified commercial and industrial customers that have not participated in the Core programs. As to commercial and industrial customers that have participated in the programs, NHEC views the benefit to the public of disclosing this information as only theoretical. Further, according to NHEC, the incremental benefit of disclosing the identify of each customer, as distinct from its industry, is small.

NHEC's April 2006 filing makes the same arguments as to the more recent version of the information. NHEC notes that in November it inadvertently allowed public disclosure of some of the information for which it now seeks protective treatment. According to NHEC, this should not affect the outcome of its present request.

Unitil makes arguments similar to those of PSNH, adding that the customer-specific data at issue here, as distinct from the names and addresses of the commercial and industrial customers, is not already public. Thus, according to Unitil, the New Hampshire Supreme Court's decision in *Lamy v. Public Utilities Commission*, 152 N.H. 106 (2005) is not applicable.

National Grid also seeks confidential treatment of the data responses in question, invoking the policy choice reflected in Puc 2004.08 covering customer information released by competitive energy suppliers aggregators, or electric distribution companies. According to National Grid, both it and the Commission have long regarded customer-specific information to be confidential.

III. COMMISSION ANALYSIS

The Right-to-Know Law specifically exempts from disclosure "files whose disclosure would constitute invasion of privacy." [RSA 91-A:5, IV](#). The New Hampshire Supreme Court's recent *Lamy* decision, concerning customer-specific information gathered by utilities and then in the possession of the Commission, lays out the relevant legal framework for deciding whether to disclose documents that fall within this exception.

The privacy exception means that "financial information and personnel files and other information necessary to an individual's privacy need not be disclosed." *Lamy*, at 109. The required analysis proceeds in three steps:

First, we evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure. Next, we assess the public's interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government. Finally, we balance the public interest in disclosure against the government interest in nondisclosure and the individual's privacy interest in nondisclosure. *Id.*

We discern a relevant privacy interest that a business has in data that would reveal the amount of electricity consumed by the enterprise. As the utilities have pointed out, the specific SBC sums paid by individual commercial and industrial customers is this kind of data, given that the SBC is imposed on a per-kilowatt-hour basis. It is clear that, as concerns most any commercial business, this information would be useful to direct competitors because it would reveal to them one of that business's key costs, particularly in a time of rising electricity rates and perhaps reveal information about business operations and methods of production. Revealing such information could provide competitors with information they might not otherwise have access to, giving them unfair competitive business advantages.

By contrast, the public has little interest in knowing how much money an individual customer has paid into the SBC funds or how much electricity a business has consumed. Since the SBC is divided into two pools, one directed to energy efficiency programs and the other to low-income assistance, and because decisions on expenditures are based on the total amounts of money in each fund, the sums paid by individual customers reveal nothing about how well the government is administering the SBC-funded programs. In these circumstances, as to SBC incentives paid by individual commercial and industrial customers, the relevant privacy interests outweigh the public's interest in disclosure. We grant the utilities' request to treat this data confidentially.

Disclosures that reveal the amount of SBC energy efficiency funding received by a particular commercial and industrial customer, and the resulting anticipated energy savings, present a different problem. There is a privacy interest at stake here; as the utilities point out, the information in question tends to offer insight into how individual businesses have confronted the particularly challenging issue of energy costs, insight that arguably might be of value to competitors. However, the public has an interest in disclosure of this information, because it goes to the heart of how the government is overseeing energy efficiency programs. For example, this information could reveal whether the government is allowing the utilities to direct energy efficiency incentives in an inappropriate or inequitable manner.

The Court in *Lamy* made clear that the names and addresses of commercial and industrial customers, in isolation, do not comprise information in which the customers have a significant privacy interest. *Id.* at 109-110. It left unresolved the question of whether this data, when associated with additional information like energy efficiency incentives received and

kilowatt-hours saved, would be entitled to confidential treatment. We conclude that it does not in the particular circumstances of this case. To rule that a business that seeks the kind of assistance that is available via the core energy efficiency programs, established as part of a legislated public policy, ought reasonably to expect that its use of this money will be subject to public scrutiny is another way of saying that the public's interest in seeing how well and how fairly these funds are spent outweighs the privacy interest in question.

Accordingly, to the extent they have not already done so, we instruct the utilities to prepare and submit copies of the documents in question that identify the name and address of commercial and industrial customers that have received energy efficiency funding and further sets forth the amount of the incentives paid to each customer and the expected lifetime savings from the particular energy efficiency measure. These documents will be made available to the public pursuant to RSA 91-A:4.

Based upon the foregoing, it is hereby

ORDERED, that the motions and requests for confidential treatment submitted by Granite State Electric Company, New Hampshire Electric Cooperative, Public Service Company of New Hampshire and Unitil Energy Systems, Inc. are granted in part and denied in part, as more fully set forth herein; and it is further

ORDERED, that the determination as to protective treatment contained herein shall be subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party or any other person, to reconsider this Order in light of RSA 91-A should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this sixth day of April, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary