

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 09-035

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Permanent Rate Increase

Order on Motions for Confidential Treatment and Waiver of Filing Requirements

ORDER NO. 25,037

October 30, 2009

On June 30, 2009, Public Service Company of New Hampshire (PSNH or Company) filed two motions for confidential treatment and waivers of Commission filing requirements in connection with its permanent rate filing made on June 29, 2009. The first motion requests confidential treatment for the compensation paid to executives and officers not otherwise publicly reported and provided in response to New Hampshire Code of Administrative Rules Puc 1604.01(a)(14). The motion also requests a waiver of the requirement to file such information with respect to so-called “minor” officers, i.e., assistant secretaries, assistant comptrollers, assistant treasurers and the Principal Engineer. The second motion requests confidential treatment for information related to stock of Northeast Utilities, Inc. (NU), the Company’s publicly held parent, owned directly or indirectly by executives and officers not otherwise publicly reported and provided in response to Puc 1604.01(a)(15). This motion also requests a waiver of the requirement to file such information with respect to the same “minor” officers.

The Commission has received no objections to the motions for confidential treatment. On August 20, 2009, however, the Office of Consumer Advocate (OCA) filed a letter stating that as a result of information publicly disclosed elsewhere, it had requested PSNH to provide other non-confidential information, and that the OCA and the Company would work to resolve the

issues. On September 23, 2009, PSNH filed two letters referring to its discussions with the OCA. One letter provided, in non-confidential form, the officer and director compensation information previously filed and for which confidential treatment had previously been sought, and a page from the 2007 and 2008 FERC Form 1s that identifies the titles and names of PSNH's executive officers with salaries greater than \$50,000 and the annual salary of two of the officers. The other letter provided, in non-confidential form, the officer and director stock ownership information previously filed and for which confidential treatment had previously been sought and page 18 of a document disclosing the share ownership of NU's trustees and certain executive officers as of March 16, 2009. No party responded to the September 23, 2009 letters.

We discuss the issues raised by the motions in three sections. The first section deals with the requests for waiver of filing requirements regarding minor officers, the second section rules on a threshold question of compliance with rate case filing requirements regarding officer and director compensation and stock ownership, and the third section deals with the requests for confidential treatment.

A. Requests For Waiver Of Filing Requirements Regarding "Minor" Officers

As part of its motions, PSNH requests that the filing requirements of Puc 1604.01(a)(14) and (15) be waived for its assistant secretaries, assistant comptrollers, assistant treasurers and the Principal Engineer (hereinafter, "minor officers") in connection with compensation and stock ownership information. The Company contends that these people generally perform other, non-officer duties which occupy the vast majority of their time and that they devote little time to performing tasks as officers of PSNH. Moreover, PSNH contends that its sister companies in Connecticut are not required to report information for such officers to Connecticut regulators. It notes in the two motions that the minor officers' compensation is not disclosed within the

company and the positions are not ones as to which the employees understood their compensation would be disclosed. In the case of stock ownership, PSNH states that NU tracks stock ownership for its “Trustees and Senior Management” as required by securities regulations but does not track the beneficial ownership of stock by officers, ownership by their families, or NU shares held in street name or a brokerage account.

The rules for which PSNH seeks waiver, Puc 1604.01(a)(14) and (15), apply to officers and directors generally, and do not differentiate between “officers” and “minor officers.” Thus, absent a waiver, the information is to be disclosed. Pursuant to Puc 201.05, the Commission shall waive the provisions of any of its rules upon request, if it determines that the waiver will serve the public interest and will not disrupt the orderly and efficient resolution of the pending matters. In determining whether the waiver will serve the public interest, the Commission is to consider whether compliance would be onerous or inapplicable in the given circumstances, or if the purpose of the rule can be satisfied by another method. Puc 201.05(b).

We will grant PSNH’s waiver request with respect to the stock ownership information specified in Puc 1604.01(a)(15) a., b., and c. pertaining to the minor officers identified by the Company. Since the stock ownership in PSNH’s parent, NU, is so widely distributed and information about stock ownership does not necessarily relate to compensation or expenses of the company, the information is not likely to have a discernable bearing on the revenue requirement and rates to be established in this proceeding. We note that our ruling is not to be interpreted as a ruling on the scope of possible discovery with respect to the stock ownership information regarding the minor officers. In addition, if the issue of stock ownership of PSNH minor officers becomes a contested matter in this case, we will revisit whether the requirements of Puc 1604.01(a)(15) should be imposed.

We will deny the waiver request with respect to the compensation of minor officers. PSNH has not asked for such a waiver in previous dockets and PSNH offers no persuasive reason why such a waiver should be granted. PSNH contends that these officers do not perform significant work as officers for PSNH but this is not a sufficient reason to permit a blanket exemption from the rule, particularly since the issue of compensation is directly relevant to the revenue requirement and rates to be established in this proceeding. PSNH has not demonstrated that reporting compensation for these additional officers would be onerous. Finally, we are not persuaded that the filing requirements of other companies in other jurisdictions compel any similar conclusion in this instance. Accordingly, PSNH's request for waiver of the requirements of Puc 1604.01(a)(14) is denied and PSNH is ordered to file the required information within 10 days of this Order.

B. Compliance with Commission Rate Case Filing Requirements Regarding Officer and Director Compensation and Stock Ownership

Before turning to the issue of whether confidential treatment should be accorded the information to be filed pursuant to Puc 1604.01(a)(14) and (15), we must decide a threshold question – whether PSNH has filed all the requisite information regarding directors and non-minor officers in the first instance. Under Puc 1604.01(a)(14), “[a] list of officers and directors of the utility and their compensation for the last 2 years” must be filed as part of a full rate case. Under Puc 1604.01(a)(15), utilities are also required to file:

- ...the amount of voting stock of the utility categorized as follows:
 - a. Owned by an officer or director individually;
 - b. Owned by the spouse or minor child of an officer or director; or
 - c. Controlled by the officer or director directly or indirectly.

As further described below, PSNH has filed some compensation and stock ownership information. It has not requested a waiver from the requirement to file the compensation and stock ownership information regarding directors and non-minor officers.

PSNH states, however, that although NU tracks stock ownership for its “Trustees and Senior Management” as required by securities regulations, it does not track the beneficial ownership of stock by officers, ownership by their families, or NU shares held in street name or a brokerage account. Accordingly, the filing of stock ownership information pursuant to Puc 1604.01(a)(15) would first obligate PSNH to obtain certain information it does not have. PSNH provides no explanation as to why it does not maintain such information, as it is not a new element of the Commission’s rate case filing requirements. PSNH similarly does not assert that reporting the information would be impossible or onerous. Though we grant the stock ownership information waiver request for minor officers, we see no basis to do so for the directors and other officers and thus we will order PSNH to complete the filing by submitting all the stock ownership information required by Puc 1604.01(a)(15) a., b., and c.

PSNH has now identified, in non-confidential papers filed with the Commission, the total compensation and amounts allocated to PSNH Distribution in 2007 and 2008 of four officers, i.e., the Chairman, Chief Executive Officer, Senior Vice President and Chief Financial Officer, and Senior Vice President and General Counsel, as well as the total compensation and allocated amounts of the other non-minor officers, i.e., all the Vice Presidents and the President and Chief Operating Officer, without, however, identifying them by name or title.¹ In addition, PSNH has now provided, in non-confidential form, the annual 2007 and 2008 salaries of two officers, the

¹ PSNH’s board of directors is comprised of four officers, the Chairman, Chief Executive Officer, Senior Vice President and Chief Financial Officer, and the President and Chief Operating Officer. Thus, the total compensation of three of the four directors has been provided.

President and Chief Operating Officer and the Vice President-Generation, disclosed on the publicly available FERC Form 1.

As to information regarding stock ownership of NU shares, PSNH has now filed a document listing the total stock ownership and a brief categorization of how the stock was held in 2007 and 2008 of four officers, i.e., the Chairman, Chief Executive Officer, Senior Vice President and Chief Financial Officer, and Senior Vice President and General Counsel, as well as the other non-minor officers without, however, identifying them by name or title. PSNH did not seek confidential treatment of this document.

The Commission's rules clearly contemplate that officer and director compensation and stock ownership information will be filed in such form that the information can be identified with a particular officer or director, a requirement which PSNH satisfied in previous rate cases. *See* DE 06-028 and DE 03-200. Except for four high ranking officers and three directors of PSNH, however, the compensation and stock ownership information filed in the present case cannot be identified with a particular officer or director. Accordingly, the Company's filings do not meet the New Hampshire filing requirements in this regard. Since the Company has not requested a waiver or set forth any basis upon which a waiver of these requirements might be granted, we will, except to the extent of the limited waiver granted in this order regarding the stock ownership of minor officers, order the Company to re-file the director and officer compensation and stock ownership information in such form that the information can be identified with each director and officer.² Our ruling is not to be interpreted as a limitation on

² PSNH must file the total compensation of each director and officer. In addition to the total, PSNH must also separately state salary, incentive compensation, and other annual compensation as it has done in past rate case filings such as DE 06-028 and DE 03-200 and as indicated on pages 239 and 240 of its June 30, 2009 rate filing. There PSNH stated that it would be "filing separately, under a motion for protective order, the required information for those individuals whose compensation is not disclosed in regulatory filings. This filing will be consistent with the requirements established by the Commission in its ruling in docket in DE 03-0200."

the scope of possible discovery with respect to the compensation and stock ownership information required to be filed pursuant to this Order.

C. Requests for Confidential Treatment of Officer and Director Compensation and Stock Ownership Information Required to be Filed

Although, as discussed above, PSNH has not fulfilled its filing requirements in certain respects, in the interest of administrative efficiency we address its motions for confidential treatment as though it has. PSNH contends that except for information relating to the senior officers of NU which is publicly disclosed in documents filed with the Securities and Exchange Commission or the Federal Energy Regulatory Commission, it does not publicly disclose the details of compensation paid to its officers. It argues that RSA 91-A:5, IV provides an exemption for disclosure of files, including personnel files, whose disclosure would constitute an invasion of privacy, and that disclosing its officers' compensation would be such an invasion. PSNH distinguished the officers and executives who charge some or all of their time to PSNH from public employees such as the teachers whose individual salaries were ordered to be disclosed in *Mans v. Lebanon School Board*, 112 N.H. 160 (1972). According to the Company, while the Commission may disallow expenses such as compensation as being unreasonable or excessive, it is still within the province of the management, and not the ratepayers, to set the level of compensation. Therefore, PSNH contends, these officers have a privacy interest at stake that is not outweighed by the public interest in disclosure.

PSNH also contends that except for information relating to the directors and senior officers of NU, which is publicly disclosed in documents filed with the Securities and Exchange Commission, it does not publicly disclose the details of its officers' stock ownership. PSNH argues that RSA 91-A:5, IV provides an exemption for disclosure of files, including personnel files, whose disclosure would constitute an invasion of privacy, and that disclosure of NU

common stock ownership by officers, whose ownership is not reported to other regulatory agencies, would be such an invasion. Therefore, PSNH contends, the benefit of disclosing these officers' stock ownership is outweighed by the invasion of privacy that would result.

We recently had occasion to rule on motions for confidential treatment in the context of confidential, commercial and financial information regarding utilities and their affiliates. *See Unitil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009). Following that approach in this case, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) in determining whether the financial information regarding officers and directors at issue in this case should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. 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.*

In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08(b).

We are called on here to determine whether confidential treatment should be extended to compensation and stock ownership information of certain PSNH officers and directors. PSNH has asserted that it has maintained the privacy of the compensation information in its files and that it has not disclosed the information to the public, except to the degree necessary in the federal regulatory filings of NU, and even then only in relation to specific employees. According to PSNH, unlike those specific NU employees who were aware that their compensation and stock ownership would be disclosed as a condition of their employment, the officers of PSNH at issue did not have such an expectation.

In previous dockets, the Commission has recognized that officers whose compensation and stock ownership information is not publicly disclosed elsewhere have a privacy interest in maintaining the confidentiality of their compensation and stock ownership information.³ See *Public Service Company of New Hampshire*, Order No. 24,333 (June 11, 2004), 89 NH PUC 327, and *Public Service Company of New Hampshire*, Order No. 24,750 (May 25, 2007), 92 NH PUC 124. Additionally, as noted by PSNH, it has maintained the privacy of this information to the extent it is able. Thus, we conclude that for those whose compensation has not previously been disclosed, there is a privacy interest at stake which would be invaded by disclosure.

At the same time, the Commission has recognized that the public has an interest in officer and director compensation since it has a direct bearing on the rates set by the Commission and paid by customers, and that the question of whether customers, through rates, are funding inappropriately high executive compensation has historically been a matter of public concern. See, e.g., *Public Service Company of New Hampshire*, Order No. 24,333 at 5. Similarly, there is

³ Where the issue has been raised, we have also found that, similar to non-officer employees, public disclosure of such information might potentially cause harm to a utility by making it easier for other companies to recruit officers away from the utility or cause discord among individuals within the company. Cf. *Union Telephone Co.*, Order No. 22,228, 81 NH PUC 525, 526 (1996), and *Pennichuck Water Works, Inc.*, Order No. 23,842, (Nov. 16, 2001), 86 NH PUC 764, 765.

a public interest in stock ownership information since it may, for example, provide valuable context in evaluating whether a utility's decisions have been prudent, and may ultimately shed light on the Commission's decision regarding the a proposed revenue requirement and whether rates are just and reasonable.

In balancing the interests at stake, we find that the individual's privacy interest outweighs the public's interest in some, but not all, instances presented herein. The Puc 1601.04(14) and (15) requirements apply in respect to compensation and stock ownership information regarding all officers and directors. The officers and directors, many if not all of whom have been through prior rate cases before this Commission, know that compensation and stock information is a required element of a rate case filing.

In the past, we have balanced the competing interests regarding officer compensation by ruling that: (1) compensation to officers already made public in other filings would continue to be publicly available; (2) the total compensation paid to other officers would be made public in the aggregate; and (3) the specific amount of compensation paid to each of the other officers would be made available under protective order to all parties and Staff. *Id.* In the case of two officers of PSNH, the President and Chief Operating Officer and the Vice President-Generation, their annual salaries have been disclosed, but their total compensation has not. As the leading officers of New Hampshire-based PSNH, whose compensation originates largely or entirely from rates paid by New Hampshire ratepayers and approved by us, we find that the public interest in full disclosure of compensation outweighs the individual privacy interest of these two NH officers. Consistent with our prior approach, we rule on the officer compensation motion as follows: (1) the compensation of officers and directors already made public, in whole or in part, shall be publicly available in all of its parts; (2) the compensation paid to minor officers, as a

group shall be filed in a manner that identifies the number of minor officers and aggregate compensation, separately stated for 2007 and 2008; (3) the compensation paid to non-minor officers shall be disclosed in a manner that identifies the individual officer by name, title and total compensation, separately stated for 2007 and 2008; and (4) except for the compensation of the President and Chief Operating Officer (as an officer and director) and the Vice President-Generation, whose annual salaries are publicly disclosed in the FERC Form 1,⁴ the specific amount of compensation paid to each of the non-minor officers shall be accorded confidential treatment and made available under protective order to all parties and Staff.⁵

Similarly, we rule with respect to the stock ownership motion that: (1) stock ownership by officers and directors already made public shall continue to be publicly available; (2) the aggregate stock ownership in 2007 and 2008 of non-minor officers shall be disclosed, with the number of shares owned and the number of officers categorized in total for the shares specified in Puc 1604.01(a)(15) a., b. and c.; and (3) the specific stock ownership of each of the non-minor officers shall be accorded confidential treatment and made available under protective order to all parties and Staff.

We conclude that this approach provides a level of disclosure sufficient to shed light on the Commission's actions, while still honoring the privacy interests of the Company's employees. We note, consistent with Puc 203.08(k), that our grant of the motions for confidential treatment is subject to our on-going authority, on our own motion, or that of the Staff or public, to reconsider our determination.

⁴ The motion for confidential treatment will be denied as to the compensation of these two officers since we find that any additional invasion of privacy occasioned by disclosure is negligible and disclosure promotes a more accurate and complete understanding of their compensation. In addition, these officers hold positions with very substantial responsibilities at PSNH notwithstanding the fact that disclosure of their compensation information may not be required by federal law.

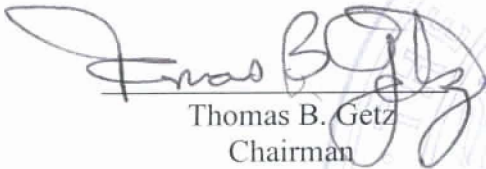
⁵ There is no need to protect the compensation levels for individual minor officers because we are requiring public disclosure of aggregate data only, for the minor officers as a group.


Based upon the foregoing, it is hereby

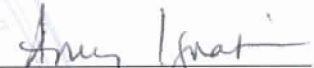
ORDERED, that PSNH re-file the director and officer compensation and stock ownership information as set forth above within ten days of this Order; and it is

FURTHER ORDERED, that PSNH's motions for confidential treatment and waiver of filing requirements filed with its permanent rate filing are granted in part and denied in part, as set forth above.


By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 2009.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

