

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 12-292

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Proposed Default Energy Service Rate for 2013

**Order Granting Confidential Treatment and
Denying Motion for Rehearing**

ORDER NO. 25,485

April 5, 2013

APPEARANCES: Matthew J. Fossum, Esq. on behalf of Public Service Company of New Hampshire; the Office of Consumer Advocate by Susan W. Chamberlain, Esq. on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

I. PROCEDURAL HISTORY

On December 28, 2012 the Commission issued Order No. 25,448 (Order) approving the 2013 default energy service rate filed by Public Service Company of New Hampshire (PSNH). In that order the Commission deferred ruling on PSNH's motion requesting that the entire contents of its Generation Report, filed in this docket, be kept confidential. PSNH's Generation Report was prepared pursuant to Order No. 25,380 (June 27, 2012) in Docket DE 11-215 dealing with PSNH's petition for interim adjustment to 2012 default energy service rate, and included a report of its generation costs, including operation, materials and capital costs. The report excluded costs related to the wet flue gas desulphurization system (Scrubber) at Merrimack Station. PSNH's motion for confidential treatment of the Generation Report was filed on December 12, 2012 and, on December 24, 2012, Conservation Law Foundation (CLF) filed an objection to PSNH's motion. On December 26, 2012, PSNH filed a motion to strike CLF's objection.

Pursuant to Order No. 25,448, on January 11, 2013 PSNH filed a revised motion for protective order and a revised Generation Report redacting only certain text related to operation and maintenance expenses for PSNH's generation facilities. On January 28, 2013, CLF and six PSNH ratepayers¹ filed a motion for rehearing of Order No. 25,488. PSNH filed an objection to the motion for rehearing on January 30, 2013.

II. POSITIONS OF THE PARTIES AND STAFF

A. Motion for Confidential Treatment and Motion to Strike CLF Objection

1. PSNH

In its initial motion for confidential treatment PSNH argued that its Generation Report was comprehensive and contained information related to operations and expenses of PSNH's generating stations that has not been provided to any person outside of the company. PSNH claimed that it had a privacy interest in the information which related to costs, budgets, staffing levels, and internal management assessments relating to PSNH generating units. PSNH argued that release of the information would put it at a competitive disadvantage in the electric energy supply market and that, due to information about the use of contractors, release would also make it difficult for PSNH to negotiate with potential contractors in the future. PSNH asserted that the report revealed information about proposed work at its generating stations which, if disclosed, would allow competitors to know when PSNH would be seeking replacement power which ultimately could result in higher costs to PSNH ratepayers.

Although PSNH acknowledged that the public has some minimal interest in disclosure of the costs which form a basis for its default service rates, in this case PSNH's privacy interest must outweigh any public interest in disclosure. PSNH further pointed to other Commission

¹ The named ratepayers were; Alexandra M. Dannis and James G. Dannis of Dalton, William Hopwood of Elkins, Janet Ward of Contoocook, Amy Matheson of North Hampton, and George Chase of Hopkinton.

decisions where information relating to PSNH's generation units was kept confidential in order to help produce lower rates.

PSNH moved to strike CLF's Objection to its motion for protective order, arguing that CLF was not a party to the docket and, therefore, N.H. Code of Admin. R. Puc 203.02(a) and 203.07(a) did not allow CLF to file pleadings.

PSNH filed a revised Generation Report on January 11, 2013, after discussions with Commission Staff (Staff) and the Office of Consumer Advocate (OCA). The revised report contained limited redactions of specific plant operations and maintenance (O&M) costs for 2011, 2012 and 2013, but nonetheless disclosed annual O&M costs aggregated for all generation plants. Further, the revised report did not redact any of the capital expenditure amounts, either in the aggregate, or for specific plants for the years 2011, 2012 and 2013.

PSNH accompanied its revised report with a more limited motion for protective order which argued that O&M information for specific generating plants remained competitively sensitive and would disadvantage PSNH as it sought to procure power for its customers in the competitive market. In addition, PSNH argued that the limited information redacted in the revised report was not particularly helpful in determining energy service rates, or in assisting the public in understanding the conduct of Commission proceedings.

2. CLF

CLF objected to PSNH's initial motion and the fully redacted report which accompanied the motion. CLF argued that the information contained in PSNH's Generation Report was critical information to both the market and ratepayers. CLF noted increasing customer migration from PSNH default service and the shrinking customer base paying for the cost of PSNH's owned generation. CLF posited that customers in particular, and the public in general, have a

compelling need to determine whether it will be economic going forward for PSNH to continue to own generation facilities. CLF pointed out that PSNH has provided generation related cost information in numerous filings with the Commission, including E-22 filings on capital expenditures, as well as forecasted capital addition costs in its annual energy service dockets.

CLF argued that because PSNH is a regulated utility with cost recovery provided for by ratepayers it is important to keep cost information transparent to the public. CLF alleged that the harm of disclosure described by PSNH was not persuasive because PSNH is not a competitive supplier and instead recovers its costs through rates. According to CLF, competitive suppliers are able to sell power at market prices well below PSNH's costs of operating its aging generation fleet. Further, CLF argued that given the importance of information on the costs of PSNH retaining its generation plants and the cost of those plants to ratepayers, the interest in disclosure should outweigh any interest in keeping such information confidential. Finally, CLF pointed out that PSNH has the burden of demonstrating that protective treatment is necessary.

CLF took no position on PSNH's revised Generation Report and did not object to PSNH's revised motion for protective order.

B. Motion for Rehearing

1. CLF and PSNH Ratepayers

CLF and the PSNH Ratepayers each argue that their rights, privileges and immunities are affected by the Order. CLF, a non-profit environmental membership organization with 435 members residing in New Hampshire, claims that its mission is to protect natural resources that may be impacted by the production, transmission and distribution of power, and to minimize environmental impacts and adverse economic impacts of coal-fired electric generation. CLF claims that it has been a voting member of the New England Power Pool (NEPOOL) since 2004

and that competitive energy markets facilitate innovation and thereby attenuate environmental impacts. Finally, CLF argues that its 300 members who are PSNH customers are directly affected by the 34% rate increase allowed by the Order. The PSNH Ratepayers claim that they are directly bearing the cost of the rate increase allowed by the Order. Thus, they claim a direct economic injury resulting from the recent rate increase and that RSA 541:3 allows them to apply for rehearing because they are directly affected by the Order.

CLF and the PSNH Ratepayers incorporate by reference arguments CLF made in a comment letter filed in this docket on December 24, 2012. In its comments, CLF argued that the affidavit of Terrance J. Large of PSNH did not give the Commission statutory authority to approve PSNH's requested rate change pursuant to RSA 378:40. According to CLF and the PSNH Ratepayers, PSNH has failed to file an integrated resource plan biennially, as required by RSA 378:38, because it last filed a plan on September 30, 2010 and as of December 21, 2012 it had not filed a subsequent plan. The 2010 plan is currently under review by the Commission, however, CLF and the PSNH Ratepayers argue that the exception in RSA 378:40 for plans under Commission review does not apply where the utility has failed to file a new plan every two years pursuant to RSA 378:38. CLF and the PSNH Ratepayers further point out that PSNH has not requested a waiver of its filing requirement as it had done in the past. *See* RSA 378:38-a and *Public Service Company of New Hampshire, Order on Request for RSA 378:38-a Waiver*, Order No. 24,435 (Feb. 25, 2005).

2. PSNH

In response to CLF's and the PSNH Ratepayers' motion for rehearing, PSNH incorporates by reference and attaches a copy of arguments it made in Docket DE 10-261, its ongoing Least Cost Integrated Resource Plan docket. In a Motion to Strike and Objection filed

on December 19, 2012 in that docket, PSNH argued that RSA 378:38 required biennial filings, but did not address when the two year period begins. PSNH asserted that the Commission had required filings later than two years after filing of the prior least cost integrated plan in several instances in order to allow for review and analysis of the prior plan filing before requiring a new filing. *See Public Service Co. of New Hampshire*, 91 NH PUC 527 (2006), *Public Service Co. of New Hampshire*, 94 NH PUC 103 (2009) and *Public Service Co. of New Hampshire*, 94 NH PUC 760 (2009).

In Docket DE 10-261 PSNH argued that CLF and the PSNH Ratepayers' interpretation of the least cost integrated resource plan filing requirement would result in a pancaking of the filings, and posited that such a process would be inefficient and wasteful of both time and money. PSNH claimed that the Commission has developed a long-standing administrative construction of RSA 378:38 by consistently requiring a filing of a new least cost integrated resource plan within two years of its decision on the prior plan. In further support of its argument, PSNH noted that RSA 378:38-a provided the Commission with broad waiver authority regarding least cost integrated resource plans.

In its current objection, PSNH concludes that the CLF and PSNH Ratepayers motion for rehearing does not raise any new arguments or evidence that has not been considered by the Commission in Order No. 25,448.

III. COMMISSION ANALYSIS

A. Motion for Confidential Treatment and Motion to Strike CLF Objection

In this case before reaching the merits of PSNH's motion for confidential treatment, we must address PSNH's arguments regarding CLF's standing to object to its motion. Although PSNH correctly cites Commission rules limiting pleadings filed in adjudicative dockets to those

who are parties², in matters of the public's right to access to information, we must defer to RSA 91-A regarding standing to request such information. While under RSA 91-A:4, IV CLF could have requested access to the Generation Report filed with the Commission simply by letter, email or other communication outside of the docket, the fact that CLF chose to present its request as a pleading in this docket should not negate CLF's right to the information pursuant to RSA 91-A:4, IV. To refuse CLF access based upon the Commission's pleading rules would elevate form over substance and frustrate the purpose of RSA 91-A. Thus, we find that CLF had standing to request access to the Generation Report pursuant to RSA 91-A:4, IV.

In considering PSNH's request for confidential treatment, we are guided by RSA 91-A:5, IV and the cases interpreting it. *See Lambert v. Belknap County Convention*, 157 N.H. 375 (2008) and *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005). In its revised report and motion PSNH has reduced the scope of information it seeks to protect to a limited subset of data concerning O&M costs for each of its generating facilities and has released aggregated annual O&M costs for all generating units for 2011, 2012 and 2013. These revisions were arrived at through discussions with Staff and OCA. The data concerning O&M costs of each generating unit would reveal competitively sensitive data to other competitive generators and suppliers. We find that PSNH has a privacy interest in that information. Because PSNH recovers the cost of its generating plants through its default service rates which are regulated by the Commission, we find that the public has an interest in disclosure of the costs of operating PSNH's generating units in order to understand the manner in which the Commission determines default service rates. When balancing these two interests, we find that providing the aggregated O&M data will give the public sufficient information concerning the Commission's ratemaking process; protecting unit specific data will protect PSNH's legitimate privacy interest. Therefore

² Puc 203.02(a) and 203.07(a)

we will grant PSNH's revised motion for protective order, which we note was not objected to by any party, nor by CLF. Further, we note the right of others to request reconsideration of the treatment of this information in the future, as well as our ability to do so on our own motion. Puc 203.98(k).

B. Motion for Rehearing

Pursuant to RSA 541:3 the Commission may grant rehearing or reconsideration when a party shows good reason for such relief. Good reason may be shown by identifying new evidence that could not have been produced in the underlying proceeding, *see O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977), or by identifying specific matters that were "overlooked or mistakenly conceived" by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Public Service Company of New Hampshire*, Order No. 25,239 (June 23, 2011) at 8.

CLF and the PSNH Ratepayers raise issues concerning whether PSNH has complied with RSA 378:38 and whether the Commission may raise PSNH's default service rates in this docket consistent with RSA 378:40. In the Order we found that PSNH's calculation of its default service rate in this proceeding is consistent with its most recent least cost integrated resource plan found adequate by the Commission. Order at 10. We did not address CLF's arguments concerning the biennial filing requirements under RSA 378:38 in the Order. As a result, we will discuss those arguments here.

The biennial filing requirement under RSA 378:38 does not expressly state what event triggers the two year time frame. CLF and the PSNH Ratepayers interpret the statute to require the two years to run from filing date to filing date, whereas PSNH interprets the statute to require

a filing within two years of a Commission decision on the prior filing. PSNH correctly notes that the Commission has interpreted the statute to require a filing two years from the date the prior filing is found adequate by the Commission.

We continue to find that an interpretation of the filing requirement to run from the date of a Commission decision to be the best approach from a practical and regulatory standpoint. Commission decisions on LCIRPs often contain guidance on processes and information required in future filings. The time for a utility to prepare a thorough LCIRP and for the Commission to review and analyze a utility LCIRP makes it impractical to require filings two years from the utility filing date. Such a filing schedule could cause wasteful expenditure of utility resources in instances where Commission guidance on future filings did not arrive early enough in the utility's LCIRP process. We will continue to interpret RSA 378:38 to require a utility filing within two years of a Commission decision on the prior filing and will deny CLF's and the PSNH Ratepayers' motion for rehearing.

Based upon the foregoing, it is hereby

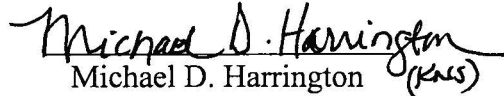
ORDERED, PSNH's second motion for confidential treatment filed by Public Service Company of New Hampshire is GRANTED; and it is

FURTHER ORDERED, that the motion for rehearing filed by Conservation Law Foundation and the PSNH Ratepayers is DENIED.

By order of the Public Utilities Commission of New Hampshire this fifth day of April,
2013.




Amy L. Ignatius
Chairman



Michael D. Harrington (KMS)
Commissioner

Attested by:



Debra A. Howland
Executive Director