

THE STATE OF NEW HAMPSHIRE
BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 12-292
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
Default Energy Service Rate for 2013

DE 11-215
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
Petition for Interim Adjustment to Default Energy Service Rate



CONSERVATION LAW FOUNDATION'S OBJECTION TO PUBLIC SERVICE
COMPANY OF NEW HAMPSHIRE'S MOTION FOR PROTECTIVE ORDER
RE: REVIEW OF PSNH'S GENERATION COSTS

The Conservation Law Foundation ("CLF") hereby objects to Public Service Company of New Hampshire's ("PSNH's") Motion for Protective Order Re: Review of PSNH's Generation Costs dated December 12, 2012 ("Motion") and filed in DE 12-292. In support of this objection CLF states as follows:

1. CLF was an intervenor in DE 11-215, the docket in which the Commission issued Order No. 25,380, the order that directed PSNH to undertake a review of generation costs and to submit actual costs for 2011 and updated forecasts of costs for 2012 and 2013.
2. On December 12, 2012 PSNH filed the Motion in a different docket, DE 12-292, asking the Commission to issue an order preventing the public disclosure of PSNH's generation costs, arguing that there were limited benefits to disclosure of the information.
3. The information at issue here is critical information; the market and ratepayers will be adversely impacted if consumers are forced to subsidize uneconomic

generation. The ongoing customer migration trend, whereby a shrinking base of energy service rate customers are being forced to bear PSNH's above-market costs, is already imposing excessive costs on ratepayers and sapping the economic vitality of the state. The information for which protective treatment is being sought is information that will help ratepayers, members of the public and public officials determine whether it is, and will continue to be going forward, economic for PSNH to own generation. Further, the continued accumulation of costs for these plants raises the concern of PSNH making claims of stranded costs and its need for recovery of the same.

4. PSNH argues, as it has in the past, that revealing this kind of information would provide some sort of advantage for competitors. It is difficult to conceive of how any particular competitive generator could utilize such information to obtain an advantage. The Commission recognized this when it rejected a similar request for protective treatment of capital budget information in DE 10-261, Order No. 25,234. In that Order the Commission said that it could not "identify a privacy interest that would be violated by disclosure of this information to the public." It went on to say that "current market realities would militate against harm to the Company." Order No. 25,243, pp. 8-9. It is important that the Commission critically evaluate the claims that PSNH makes in its Motion. Broad and cursory statements are not sufficient to justify the relief that PSNH is requesting.

5. Moreover, PSNH's Motion is inconsistent with prior Commission practice. In a number of dockets and contexts, PSNH has provided and will continue to provide a significant amount of generation-related cost information. PSNH provides detailed information about construction costs in the periodic filings which it makes with

the Commission pursuant to Order No. 23,122 and also in the E-22 filings that it makes with the Commission, all of which are public information. PSNH also typically provides detailed information about forecasted capital addition costs in energy service rate dockets.

6. As the Commission noted in the Re *EnergyNorth Natural Gas, Inc. dba KeySpan Energy Delivery of New England*, 88 NH PUC 221, 226 (2003), the Supreme Court has instructed state agencies that they should “construe this exemption narrowly.” RSA 91-A:1 provides: “[o]penness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.” Because PSNH is a regulated utility, ratepayers and members of the public, including public officials, should be able to follow the trail of and see sufficient detail about the money that the utility collects from ratepayers, invests in its power plants, and dividends to its shareholders. The release of the information requested will serve the important function of informing the public, including PSNH’s ratepayers, of the Company’s costs of continued ownership of its generating facilities. The benefits of keeping such information transparent and open to the public clearly outweigh PSNH’s self-serving claim of “harm” that might be caused by making such information available.

7. The so-called harm alleged by PSNH, lacks any meaningful detail and does not add up: competitive suppliers are already able to sell power at market prices which are far lower than the energy generated by PSNH’s aging fleet of power plants. The release of cost information will not harm PSNH; however, the ratepayers are bearing millions in above market costs and the information will substantiate why this is the case.

Given the absence of detailed substantiation by PSNH to support its contention that this will harm PSNH, CLF argues that the benefit of releasing the information at issue far outweighs the claim of purported harm that could result from the release of the information. The NH Supreme Court has held that the right to know law gives to any member of the general public as much right to disclosure as one with a special interest in a particular document. *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106, 109 (2005). Whether it is ratepayers, including intervenors like CLF and its members, or other members of the public, the information at issue is such that it “informs the public of the conduct and activities of its government” and is therefore in the public interest. Disclosure of this information will shed light on very important issues that this Commission, New Hampshire state policymakers, ratepayers and the public are dealing with now, and inevitably going to have to grapple with going forward.

8. The burden of proving the necessity of providing protective treatment to all of the information included in these responses falls on PSNH, a burden which it has not met. As noted above, the justification it has provided for keeping the information confidential is illogical, its position in this docket is inconsistent with other filings it has made and routinely makes with the Commission, and the Commission has found in the past that such information should be available to the public. PSNH is in effect asking to keep information confidential as if it were a merchant owner of generation, while at the same time it continues to insulate itself and its investors from risk while seeking the financial protection of rate regulation. Ratepayers deserve the opportunity to have full disclosure of what it will cost for PSNH to continue to own and operate generating facilities and the investments they intend to make as a “public utility.”

9. For the reasons cited above CLF believes that the right to know law as applied to this particular request requires that the Commission reject PSNH's Motion.

WHEREFORE, CLF respectfully requests that the Commission:

- A. Deny PSNH's request for protective treatment; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of December, 2012 a copy of the foregoing Objection was sent electronically to the service list in dockets DE 11-215 and DE 12-292.



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