

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

EVERSOURCE ENERGY

Notice of Intent to File Rate Schedules

Docket No. DE 19-057

OBJECTION TO MOTION TO COMPEL DATA RESPONSE

NOW COMES Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or the “Company”) and, pursuant to Puc 203.07 and Puc 203.09, hereby objects to the Motion to Compel Data Response (the “Motion”) filed on August 27, 2019 by the Commission Staff. The Motion misunderstands the nature of the information underlying the data request, and dismisses relevant law pertaining to the requested information. Further, the Company has indicated a willingness to work with Staff and to provide probative information to the Staff; therefore, the Motion should be denied. In support of this submission, PSNH says the following:

1. The instant matter is a rate case pertaining to PSNH’s electric distribution business. In connection with the case, as part of its audit, and again as part of the formal discovery in this case, the Staff requested “un-redacted copies of the federal tax returns for 2016, 2017, and 2018 for the Eversource Energy business trust and voluntary association.” Motion, Attachment at 1. According to the Staff, it requires this information so that “Staff can determine whether the tax liability of Eversource Energy was appropriately allocated among the affiliated companies that form Eversource Energy, including the New Hampshire utility.” Motion at ¶ 10. Moreover, the Staff contends that it “will not be able to affirm to the Commission that the tax expense for Eversource is reasonable, and should be included in base distribution revenue, which is relevant to this proceeding.” Motion at ¶ 11. On a consistent basis through the audit and the formal

discovery in the proceeding PSNH has objected to producing the requested documents on the bases that the returns are not relevant to the instant matter and that they are protected from disclosure by federal law. PSNH's objections remain valid and the Motion should be denied.

2. Regarding relevance, as noted above the Staff contends that the information about the "Eversource Energy business trust and voluntary association" is necessary to understand the allocation of tax liability to the various operating entities under the corporate umbrella of Eversource Energy, including PSNH. For clarity, the "Eversource Energy business trust and voluntary association" is the ultimate Eversource Energy parent company – a public utility holding company. That entity, which is legally and functionally separate from PSNH, holds the stock or other ownership interests of various regulated and unregulated operating entities, including PSNH. Eversource Energy does not incur tax expense on behalf of the companies under its purview, nor does it pay their tax liability. An Eversource Energy return would contain deductions, credits and activity on an aggregate basis for all of Eversource Energy's various businesses, including non-regulated businesses, and would not tie out to information on PSNH's stand-alone tax liability. Furthermore, PSNH has noted to the Staff in its response to data request Staff 5-005, which is attached to this objection, that only Eversource Energy Service Company ("EESCO") allocates costs to affiliate companies and the parent company does not allocate costs to affiliate companies. Accordingly, having the unredacted tax returns of the Eversource Energy parent will not inform any assessment or investigation as to the tax liability of the various operating companies. The tax returns of the Eversource Energy parent have no nexus, probative information, or relevance to an assessment or investigation of PSNH's tax liability.

3. Moreover, PSNH has already provided to the Staff unredacted copies of its state and federal tax returns for 2017. Thus, the Staff already knows the tax liability of PSNH. Additionally, PSNH has offered other information to the Staff that would be probative, but the Staff has maintained its request for the unredacted returns of Eversource Energy only. PSNH is willing to provide its state and federal tax returns for 2016. More probative in terms of the kind of analysis the Staff believes is necessary would be tax information of EESCO. PSNH is willing to share certain redacted information of EESCO that would allow the Staff to understand the allocation of tax responsibility from that entity. PSNH is also willing to have members of its tax department discuss the allocation of tax liability with the Staff to allow Staff to assess and confirm that the tax liability of PSNH is reasonable and appropriate. Although, Staff believes that it requires the Eversource Energy returns, the returns of that taxpayer do not contain the type of information that would be necessary or probative of the tax liability of PSNH.

4. With respect to matters of federal law, PSNH had informed the audit staff that pursuant to 26 U.S.C. §6103 the tax returns of Eversource Energy are protected from disclosure. In its Motion, the Staff argues “There is significant statutory guidance under 26 U.S.C. § 6103 regarding the confidentiality of tax returns and return information, but that guidance relates to release of such information by government officers or employees, rather than by the entity filing the return.” Motion at 2-3. Contrary to the Staff’s characterization, that statute contains more than “guidance” relating to the release of information by government entities.

5. At its outset, 26 U.S.C. § 6103(a) is explicit that “Returns and return information shall be confidential” except as provided later in the statute. Thus, tax returns are confidential unless there is a specific exception to that confidentiality in the law. None of the exceptions in the statute apply here. Though there are exceptions relating to state taxing officials, *see* 26 U.S.C.

§6103(d)(1), the Commission is not such an agency. Furthermore, 26 U.S.C §6103 is a “exemption statute” under the Federal Freedom of Information Act, 5 U.S.C. §552, meaning that material covered by 26 U.S.C §6103 is protected from disclosure under the Freedom of Information Act. *See* 5 U.S.C. ¶552(b). In short, the returns and return information of Eversource Energy, a taxpayer separate and distinct from PSNH, are confidential documents pursuant to federal law.


6. According to the Staff, the federal law “does not preempt the authority of the Commission under RSA 365:6 or RSA 365:15 to inspect the books and records of [PSNH], a regulated public utility, and does not relieve the Company of its obligation to provide those books and records for inspection upon request.” Motion at 3. As noted above, PSNH has provided its information for 2017 and will provide additional information on PSNH for 2016, if desired. Thus, the Staff has the opportunity to inspect the books and records of PSNH. Further, PSNH remains willing to make information available relative to EESCO and to have its tax professionals engage in direct discussions with the Staff to provide the information the Staff seeks. The tax returns of Eversource Energy, however, are not relevant to an understanding of PSNH’s tax liability, nor probative of that assessment, and are protected from disclosure. Accordingly, the Motion should be denied.

WHEREFORE, PSNH respectfully requests that the Commission:

- A. Deny the Staff's Motion to Compel; and
- B. Grant such further relief as is reasonable and appropriate.

Respectfully submitted this 6th day of September, 2019.


PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

September 6, 2019
Date


Matthew J. Fossum