

DR 96-216

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Request for Disclosure of Confidential Information

Clarification of Order Nos. 21,895 and 22,405

O R D E R N O. 23,631

January 30, 2001

I. PROCEDURAL HISTORY

On February 25, 2000, the New Hampshire Public Utilities Commission (Commission) received a request from Mr. Bob Sanders of Granite News Service pursuant to the "Right to Know Law," RSA 91-A, to inspect the following information with respect to Public Service Company of New Hampshire (PSNH):

A list of all companies on special tariffs indicating why they are there, whether it be for economic development (ED), business retention (BR) or load retention (LR) purposes.... [and] whether the companies would have had a LG or GV rate, if not on the special rate.

Mr. Sanders argues that the discounted rates are not ordinary tariffs, but a special break to replace special contracts. Mr. Sanders claims that all non-confidential information regarding special contracts was made public, and since the contracts have become tariffs, the information is now unjustly withheld. He argues that the public has the right to know why certain companies get a "break" on their rate and what the break is. He states further that "[k]nowing

what class they came from (LG or GV) helps the public assess what kind of break they got."

On February 29, 2000, PSNH submitted a letter to the Commission opposing the disclosure of the requested information, pursuant to RSA 91-A and N.H. Code Admin. Rule Puc § 204.06c(2). PSNH stated that Mr. Sanders had made a similar request to the company for information regarding PSNH customers on certain tariff rates. PSNH stated that it provided Mr. Sanders with the names of customers taking service under its discounted tariff rates and the raw number of customers taking service under each rate without identifying which customers are on which rate. The company noted that the names of customers taking service under discounted rates is provided once a year to the commission so that any direct competitor of these customers can discover this fact and approach PSNH for similar treatment. PSNH indicated that Mr. Sanders was free to contact the customers directly to obtain the information.

PSNH refused to identify which customer is taking service under each specific discounted rate, or which customers were taking service under the applicable standard tariff Rates GV or LG. PSNH stated that it did not disclose this information in the ordinary course of its business. PSNH

indicated that it entered into a standard confidentiality agreement with customers requesting discount tariff service so that PSNH will not disclose their business plans. Under this agreement, PSNH submits that it is prohibited from disclosing which tariff a customer is taking service under. The company notes that disclosure of the tariff will identify the customer as having a particular monthly recorded load. In addition, the public would learn which customers had plans for expansion or creation of new load (Rate ED), plans for closing or moving operations out of state (Rate BR), or plans for displacing load with generation (Rate LR).

PSNH argued that Mr. Sander's request raised similar concerns as that presented in the context of the Retail Competition Pilot Program and discussed in Order No. 22,285, Docket No. DR 95-250, 81 NH PUC 443 (June 10, 1996). In that Order, the Commission granted protective treatment for load and usage data that utilities were providing to competitive suppliers, finding customer information to be private in nature.

On March 3, 2000, the Commission's General Counsel responded to Mr. Sanders' request. The response noted that the Commission does not maintain in its files customer specific information such as the specific list of companies or

persons on each tariff offered by PSNH, or the basis upon which such companies or persons qualified for the particular tariff they are on. Thus, Mr. Sanders was informed that the information sought is not available as a public record pursuant to the requirements of RSA 91-A:4, and the Commission was unable to make it available.

The General Counsel's letter also noted that PSNH's ED, BR and LR rates were approved by the Commission in Docket No. DR 96-216, Order No. 22,405, issued November 6, 1996. In that Order, the Commission granted PSNH's request to accord confidential treatment to the customer specific information for those customers qualifying for the special tariffs. Under the Commission rules, and as recited in the Order, the granting of confidential treatment is subject to reconsideration upon concerns raised by the Commission on its own motion or by any interested person. The General Counsel's letter advised Mr. Sanders that it had determined to treat his letter as a request for reconsideration of the confidential treatment accorded the information he was seeking. Accordingly, PSNH was notified of this determination by a second letter from the General Counsel, also dated March 3, 2000, and was provided an opportunity to demonstrate that such confidential treatment was still warranted and in the public

interest. In addition, the Commission allowed each of the customers whose information is the subject of potential public disclosure an opportunity to submit its position on this matter.

On March 13, 2000, PSNH submitted its "Second Response to Request for Disclosure of Confidential Information" which incorporated the arguments it made in its February 29 letter set forth above. In addition, PSNH noted the background under which it had been granted confidential treatment regarding customer specific information for those receiving service under the discount tariffs. PSNH noted that in Docket No. DR 95-216 the Commission established, among other things, reporting requirements for these tariffs. The reporting requirements would have required the filing of customer specific information which would be subject to public disclosure. At the time the company submitted its first report under these reporting requirements, PSNH also filed a motion for a protective order, and it was this motion which the Commission approved in Order No. 22,405.

PSNH also stated that it is only required to publish and make available its tariff rates and special contracts, and has no obligation to divulge which customers are on which tariff rates, and claimed that disclosure of this information

would put PSNH at a competitive disadvantage and put pressure on rates charged to other customers.

The Commission received letters from the following PSNH customers, each of whom receive service pursuant to one of the discount tariffs: Dorr Woolen Company; Lydall Technical Papers; Textron Automotive Company, Inc.; Hendrix; Kingsbury Corporation; Isaacson Structural Steel, Inc.; Watts Industries, Inc.; Hutchinson Sealing Systems, Inc.; NYCOA; Cambridge Tool; Burgon Tool Steel; The Bronze Craft Corporation; Freudenberg-NOK General Partnership. Each of these customers stated that it was their position that the information which has been subject to the confidentiality agreement between the customer and PSNH, and subject to the Commission's protective order granted in Order No. 22,405 should remain confidential. In its letter, Isaacson Structural Steel, Inc. disclosed that it was receiving service pursuant to the LR rate.

By letter dated March 14, 2000, the General Counsel advised Mr. Sanders of the discovery of certain material in the Commission's files that may be responsive to his request. Mr. Sanders was invited to review this material at his convenience during the regular business hours of the Commission.

On March 17, 2000, Mr. Sanders submitted a letter responding to PSNH and its customers' arguments and concerns, clarifying that he was not looking for detailed usage information, but only the specific tariff under which each company receives service and the tariff they would have been under but for the discount. Mr. Sanders stressed again the public purpose behind his inquiry, concerning whether the discount tariffs are "fair" and why particular companies received the discounts. He questioned whether the companies needed the level of discount they received, whether individual companies are hurt by these special breaks. Mr. Sanders also questioned the commercial value of this information. He noted that it is public information that these companies are receiving a discount, and that the information he is seeking would reveal why: whether they are expanding, may leave, or might generate their own power. Mr. Sanders is also seeking information about which tariff the customer was on prior to qualifying for the discounted tariff. He stressed that he is not asking, however, for the details with respect to any of these questions or for any of these customers' exact usage. Finally, Mr. Sanders restates that his request is in the nature of a "Right to Know" request.

II. COMMISSION ANALYSIS

Pursuant to the Reporting Requirements in Order No. 21,895, Docket No. 95-216 (November 6, 1995):

Each utility with an economic development and/or business retention tariff on file with the Commission shall file on July 1 of each year the following: (1) the name of the company receiving service under either the economic development tariff or the business retention tariff, (2) the date service under the respective tariff commenced, (3) the date service under the respective tariff will terminate, (4) the four digit SIC code of the customer, (5) the economic effects of the tariff on recipient customers and other utility customers, (6) the number of jobs created directly as a result of receiving service under the tariff.

Accordingly, PSNH has made yearly filings with the Commission in compliance with this requirement. In addition, although this requirement does not require a report concerning customers who are rendered service under PSNH's Load Retention Service (LR), PSNH has included this information in its annual report. This report does not, however, identify which customers are on which specific rate, and the Commission does not have this information in its files. Since this material is not maintained by the Commission, it is not available as a public record pursuant to the requirements of RSA 91-A:4.

As noted by the General Counsel in his March 3, 2000 letter to Mr. Sanders, the Commission, in Order No. 22,405, Docket No. DR 96-215 (November 6, 1996), granted PSNH's

request to accord confidential treatment to the customer specific information for those customers qualifying for the special tariff. In reviewing the Reporting Requirements in Order No. 21,895, the protective order granted in Order No. 22,405 and the information regularly provided by PSNH in its annual report, it appears that a clarification of both orders is necessary, and that such clarification will resolve much of the instant dispute.

First, the Commission clarifies that Reporting Requirement No. 1, "the name of the company receiving service under either the economic development tariff or the business retention tariff" was intended to require the identification by the utility of the customer and the specific tariff under which the customer is receiving service. For administrative efficiency, this clarification is to be applied prospectively only, and shall be included in the report PSNH is next due to file.

Second, the Commission clarifies that the protective order granted in Order No. 22,405 was intended to encompass the customer specific financial and business data, but was not intended to preclude disclosure of the specific tariff under which the customer is receiving service. This interpretation is consistent with the Commission's decision in Order No.

21,454, Docket No. 94-293 (December 12, 1994) where, in the context of a special contract, a distinction was made between customer specific financial data, which was found to fit within the exemptions to disclosure under RSA 91-A:5, IV, and the discounted price terms of the contract, which was to be made public. This distinction is based upon the special contract and discounted tariff customers' request for special rate treatment which results in rates which are less than those paid by general tariff customers. In light of this special treatment, the additional public disclosure of the customer's discounted tariff is required; however, the importance of protecting customer specific financial data and load-related information requires that this information remain confidential.

As a result of this clarification, the Commission has determined that it is unnecessary for it to reconsider in any other respect the scope of its protective order, and that order remains in effect.

With respect to Mr. Sanders request that the Commission disclose the tariff rate under which these customers previously took service, this information is not contained in the files of the Commission, and it is not available as a public record pursuant to the requirements of

RSA 91-A:4. Neither was this information required to be filed by utilities under the Reporting Requirements of Order No. 21,895.

Based upon the foregoing, it is hereby

ORDERED, that the Reporting Requirements in Order No. 21,895, and the protective order granted in Order No. 22,405 are clarified consistent with the discussion above; and it is

FURTHER ORDERED, that the redacted version of PSNH's July, 2000 report in this docket is to include the identification of the specific tariff (ED, BR or LR) the customer is receiving service under; and it is

FURTHER ORDERED, that PSNH provide a copy of its redacted version of its July 2000 report in this docket to Mr. Sanders, but no earlier than the time at which the appeal rights of the affected customers have been exhausted, as provided in Puc 204.05(c)(2).

By order of the Public Utilities Commission of New
Hampshire this thirtieth day of January, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary