

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 12-084

TIME WARNER ENTERTAINMENT COMPANY L.P. d/b/a TIME WARNER CABLE

Motion for Protective Order and Confidential Treatment

Order Granting Motion

O R D E R N O. 25,413

September 19, 2012

I. PROCEDURAL BACKGROUND

On March 30, 2012, Time Warner Entertainment Company L.P. d/b/a Time Warner Cable (TWC) filed a petition with the Commission for resolution of a dispute with Public Service Company of New Hampshire (PSNH) regarding the fees charged for the attachment of TWC's cables to utility poles owned, in whole or in part, by PSNH. On July 3, 2012, the Commission issued Order No. 25,387, granting the motions to intervene by Unitil Energy Systems, Inc. (Unitil), among others. (A summary of the procedural history of this docket through July 3, 2012 may be found within Order No. 25,387). Order No. 25,387 also adopted the procedural schedule proposed by Commission Staff within its technical session report, filed on June 4, 2012. In accordance with the procedural schedule, PSNH served on TWC a data request (Set 1, Number 5, or 1-5), relating to TWC's rates and promotions, on August 3, 2012. TWC filed a motion for confidential treatment for certain portions of its response to this data request by PSNH.

II. MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

On August 17, 2012, TWC requested confidential treatment for certain schedules attached to its response to PSNH Data Request 1-5, provided to PSNH on August 17, 2012. These schedules included internal summaries of TWC's internal promotional materials, unaudited internal financial documents, and a confidential investor presentation, each relating to TWC's rates, charges and customer promotions. TWC asked that the information be protected from general public disclosure. In its motion, TWC argues that these materials contain confidential, commercially-sensitive financial information, disclosure of which could harm TWC competitively.

With regards to any public interest in disclosure, TWC argues that the public has no interest in the details presented in this confidential information, disclosure of the information would not provide members of the public with any insight into the workings of the government, and that disclosure of the information to the general public, including TWC's competitors, would likely cause competitive harm to TWC.

TWC does allow that, subject to Commission order requiring confidential treatment, dissemination of these schedules to "Pole-Owning Parties" intervening in this docket (PSNH and Unitil) would not cause competitive harm to TWC, and could provide relevant information to these parties. To this end, TWC requests that the Commission allow dissemination of its unredacted confidential schedules to TWC's response to PSNH Data Request 1-5 to the Pole-Owning Parties, subject to the requirement that the Pole-Owning Parties maintain the confidentiality of this information and not use the information for any purpose beyond this proceeding, pursuant to N.H. Code Admin. Rules Puc 203.08(j).

III. COMMISSION ANALYSIS

New Hampshire's Right-to-Know Law, RSA 91-A, provides each citizen the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception, invoked here by TWC, for "confidential, commercial, or financial information." RSA 91-A:5, IV. We have had numerous occasions to rule on motions for confidential treatment in the context of confidential, commercial, and financial information regarding petitioners before this Commission. *See, e.g., Northern Utilities, Inc.*, Order No. 25,330 (February 6, 2012); *Public Service Co. of New Hampshire*, Order No. 25,332 (February 6, 2012); *National Grid USA et. al.*, Order No. 25,370 (May 30, 2012); and *National Grid USA et. al.*, Order No. 25,400 (August 21, 2012).

Following the approach used in these cases, 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 information identified by TWC 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.* We will analyze each category of information for which protective treatment is requested in turn.

TWC argues that the information for which it seeks protective treatment constitutes “confidential, commercial, or financial information” under RSA 91-A:5, IV, and that disclosure will not provide the public with information about the conduct or activities of the Commission or other parts of the New Hampshire State or local government.

We are persuaded that the information provided by TWC constitutes competitively sensitive information that should not be disclosed. We also find that public disclosure of the information will not materially advance the public’s understanding of the Commission’s analysis in this proceeding and, moreover, could result in financial or competitive harm; we also find that disclosure of this information to the public at large would have the same effect as direct disclosure to TWC’s competitors. We note that no party or person has objected to the confidential treatment requested, nor asserted that disclosure would inform the public about governmental activities. Accordingly, in balancing the interests of TWC in protecting its information with the public’s interest in disclosure, we conclude that the information should not be disclosed to the general public, and we grant the motion. Nonetheless, in order to promote the orderly conduct of this docket we direct TWC to disclose this information to the Pole-Owning Parties. Further, we direct the Pole-Owning Parties’ to treat this information as confidential, and not distribute it to other persons or parties, or use it for any purposes outside of this proceeding.

To the extent that information for which protection is granted herein is released or made public by TWC at a later time, that information would no longer be subject to protective treatment. *See N.H. Code Admin. Rules Puc 203.08(l).* Consistent with Puc 203.08(k), our grant of this motion is subject to our on-going authority, on our own motion, on the motion of Staff, or on the motion of any member of the public, to reconsider our determination.

Based upon the foregoing, it is hereby

ORDERED, that the motion for confidential treatment is granted as set forth above.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of September, 2012.

Amy Ignatius

Amy L. Ignatius
Chairman

Michael D. Harrington

Michael D. Harrington
Commissioner

Robert R. Scott

Robert R. Scott
Commissioner

Attested by:

Debra A. Howland

Debra A. Howland
Executive Director