

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
DE 08-120

2008 CORE Energy Efficiency Programs

JOINT MOTION FOR PROTECTIVE ORDER

New Hampshire Electric Cooperative, Inc., Public Service Company of New Hampshire, Inc., Granite State Electric Company d/b/a National Grid, and Unitil Energy Systems, Inc. (collectively, "the Utilities") respectfully request a protective order establishing confidential treatment pursuant to PUC Rule 203.08, concerning the customer identification information in the Utilities' responses to Staff Data Requests Nos. 1-12 and 1-13 as they pertain to Small C&I customers.¹ In support of this motion, the Utilities state as follows:

THE DATA REQUESTS

The Utilities' Motion for Protective Order arises in the context of two data requests submitted to the Utilities by the Public Utilities Commission Staff ("Staff") on October 27, 2008. These data requests read as follows:

- 1-12. Please identify the customers receiving incentives under the Small Business program and the amount of incentive. Please organize the customers by the total incentive provided to each. Include the name of utility funding the project, the docket number under which the project was financed and the project completion date.
- 1-13. Please identify the customers receiving incentives under the New Equipment program and the amount of incentive. Please organize the customers by the total incentive provided to each. Include the name of utility funding the project, the docket number under which the project was financed and the project completion date.

¹ For purposes of this motion, the term "customers" includes members of New Hampshire Electric Cooperative, Inc.

Thus, these data requests ask the Utilities to disclose the identities of Small C&I customers who are receiving incentives under the Small Business Program and the New Equipment Program.²

**CONFIDENTIAL TREATMENT IS SOUGHT ONLY FOR
INDIVIDUAL CUSTOMER IDENTITIES**

The Utilities seek a protective order requiring confidential treatment of their responses to Staff Data Requests 1-12 and 1-13 only with regard to the specific identification of individual utility customers. To this end, the Utilities have prepared two versions of their responses to these data requests.

The “CONFIDENTIAL” version is a schedule which provides all of the information requested. In accordance with Puc 203.08(f), the Utilities have filed an original and seven copies of this schedule together with the instant motion.

The “NON-CONFIDENTIAL” response is a schedule identical in format and content, with the exception that the column providing for the individual identification of each customer has been left blank. Because it is apparent from the responses what category each customer falls into, the “NON-CONFIDENTIAL” response allows readers to know each customer’s classification. The “NON-CONFIDENTIAL” response has been provided to all parties to the discovery process in this docket.³

² All of the customers covered under DR 1-12 are Small C&I customers. With respect to DR 1-13, most of the customers involved fall into the Large C&I category, but some of NHEC’s incentives under that program go to Small C&I customers.

³ The “NON-CONFIDENTIAL” response does not include the names of residential customers. Although names were requested as part of the initial Data Request 1-22, Staff has subsequently informed the Utilities that the Utilities’ response does not need to include names. Accordingly, that Data Request is not a subject of this Motion for Protective Order.

CUSTOMER-SPECIFIC INFORMATION DETAILING PROGRAM
PARTICIPATION IS “CONFIDENTIAL, COMMERCIAL OR
FINANCIAL INFORMATION” PURSUANT TO RSA 91-A:5, IV

The Utilities maintain their customer-specific information in confidence. Customer-specific information is not available either to the general public or to other customers, absent consent of the customer whose information is being sought. Customer-specific information is not presented by the Utilities in any publicly-available reports or financial statements. The Utilities collect and maintain customer-specific information using business practices and data storage media intended to reasonably maintain the confidentiality and security of such information.

In determining whether information is confidential under RSA 91-A:5, IV, the Supreme Court utilizes a three-step analysis which examines whether there is a privacy interest at stake; whether there is a public interest in disclosure; and whether the interest in disclosure outweighs the interest against disclosure. *Lamy v. Public Utilities Commission*, 152 N.H. 106 (2005). The Supreme Court has determined that *residential* customers of utilities have a privacy interest in the disclosure of their names and addresses which outweighs the public’s right to know that information in a PUC proceeding. *Id.* In contrast, the Commission itself has determined that the amount of energy efficiency funding received by a particular Large C&I customer is not entitled to confidential treatment. Order No. 24,612 (April 6, 2006); DE 05-157, *Granite State Electric Co., et al.* Reading those orders in tandem, it appears that neither the Court nor the Commission have resolved the question of the confidentiality of information pertaining to Small C&I customers.⁴

⁴ Although the body of the Commission’s 2006 order refers to C&I programs generically, the facts of that case make it obvious that the Commission was addressing Large C&I customers. See p. 1 (data requests at issue sought

Lamy recognized the existence of a privacy interest in a residential customer's name and address. 152 N.H. at 110. One of the aspects of this privacy interest is the ability to avoid unwanted, unsolicited mail or telephone calls that could follow from disclosure. *Id.* This same principle should be applied to Small C&I customers because, although commercial businesses, they are more closely related to residential customers than to Large C&I entities. For example, while the average rebate for a Large C&I project is \$13,000, for Small C&I and Home Energy Solutions (the residential program), the average rebates are less than one-third that amount (\$4,000 for Small C&I and \$2,000 for HES).

This disparity is reflected in the difference between Large C&I and Small C&I customers themselves. While the former group includes large corporate entities, the latter group includes small "mom & pop" type businesses which are more likely to bear the name of a single individual. The individuals who operate Small C&I businesses have the same interest in protecting their identities and avoiding unwanted contacts as do residential customers. And as the Commission acknowledged in Order No. 24,612 (at p. 6), there is a privacy interest in a disclosure that reveals the amount of energy efficiency funding received by a C&I customer. Therefore, Small C&I customers have privacy interests in their customer-identifying information.

information concerning the 50 largest C&I customers); p. 7 (not entitled to confidential treatment in the particular circumstances of the case).

Similarly, the Court's decision in *Lamy* addressed the disclosure of the names and addresses of business customers only to the extent that it found that the PUC had not carried its burden of proving confidentiality. 152 N.H. at 109-110. *Id.* Thus, it appears that the Court has not foreclosed the possibility that at least some data requests made to C&I customers might be confidential. As the Commission noted in Order No. 24,612, the *Lamy* Court left unresolved the question of whether names and addresses of C&I customers, when associated with additional information such as energy efficiency incentives received, would be entitled to confidential treatment.

**THE BENEFITS OF NON-DISCLOSURE OUTWEIGH
THE BENEFITS OF DISCLOSURE**

Non-disclosure of the customers' individual identities produces benefits which extend beyond the customers themselves. Maintenance of the confidentiality of customer-specific information benefits the future operations of the energy efficiency programs and other customer programs. In order to maximize customer participation and maximize the overall public benefits of energy efficiency programs, utility customers must be willing to disclose to the utility sensitive details of their business operations. Details may include future expansion plans, methods of production or operation or other business information which customers would not otherwise reveal. To the extent that utility customers cannot be assured that the confidential information they reveal will remain non-public, the Utilities' ability to enroll participants and tailor programs for maximum efficiency will be impaired. The Commission has previously recognized this concern as it related to the potential disclosure of customer-specific information regarding PSNH's C&LM programs. *Re: PSNH*, 82 NH PUC 808 (1997).

On the other hand, there is only a theoretical public benefit to disclosure of the customer's individual identities. The Utilities do not believe that there is general public benefit to the disclosure of their customers' identities, because the inclusion of the industry code information provides readers with adequate information to probe and evaluate the receipt of energy efficiency program benefits. Presumably, the only reason for the public to have access to the names of recipients of energy efficiency money would be to contact those individuals. As the Court said in *Lamy*, however, the central purpose of RSA 91-A "is to ensure that *Government's* activities be opened to the sharp eye of public scrutiny, not that information about private citizens that happens to be in the warehouse of the Government be so disclosed." *Lamy*,

152 N.H. at 113, quoting *U.S. Dep't. of Justice v. Reporters Committee*, 489 U.S. 749, 774 (1989). Consequently, the public interest in disclosing this type of “derivative” information is “virtually non-existent.” *Lamy*, 152 N.H. at 113.

Accordingly, the benefits of non-disclosure concerning individual utility customer identification substantially outweigh any incremental benefit which the inclusion of this information may add to the Utilities’ responses to the Staff Data Requests 1-12 and 1-13.

CONCLUSION

The Utilities have attempted to fashion their Motion for Protective Order as narrowly as possible, while still protecting the legitimate privacy concerns of their customers. In the context of the Utilities’ responses to Staff Data Requests Nos. 1-12 and 1-13, the individual identities of Small C&I customers constitute confidential information under RSA 91-A:5, IV for which the benefits of non-disclosure outweigh any benefits of disclosure.

WHEREFORE, the Utilities respectfully request that the Commission take the following action:

1. Determine that the “CONFIDENTIAL” version of the Utilities’ responses to Staff Data Requests Nos. 1-12 and 1-13 are confidential pursuant to Puc 203.08(a) ; and
2. Order that the Utilities’ “CONFIDENTIAL” responses to Staff Data Requests Nos. 1-12 and 1-13 be treated as confidential in accordance with the provisions of Puc 203.08.

Respectfully submitted,

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By its attorneys,

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Dated: November 7 2008

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Dated: November 7 2008

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UNITIL ENERGY SYSTEMS, INC.

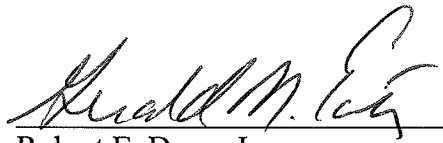
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed this day, first class, postage prepaid, to all parties appearing on the service list.

Dated: November 7 2008

By: 
Robert E. Dunn, Jr.