

DG 01-182

NORTHERN UTILITIES, INC.

Rate Case

**Order Granting Motions for Protective Order
and Confidential Treatment**

O R D E R N O. 23,970

May 10, 2002

I. MOTION REGARDING CUSTOMER INFORMATION

This Order addresses two Motions for Protective Order and Confidential Treatment filed by Northern Utilities, Inc. (Northern) in the context of the audit and base rate investigation being conducted in this docket. In the first Motion, Northern requested confidential treatment of certain customer-specific information filed in response to Staff Data Requests, Set Three, pursuant to RSA 91-A:5, IV, Puc 204.05(b) and Puc 204.06.

The Motion requests confidential treatment of customer-specific information, including names and account numbers of Northern customers. Northern also requests protective treatment for any additional discovery, testimony, argument, or briefing relative to the confidential customer information.

In its Motion, Northern states that: (1) the customer-specific information is information Northern takes

measures to protect from dissemination during the ordinary course of business; (2) release of the customer information would likely result in an invasion of privacy for the affected customers; (3) the customers identified in the data responses are not parties to the present proceeding and thus are not in a position to request protective treatment; and (4) the Commission has previously deemed customer-specific information to warrant protection from public disclosure and cited *Public Service Company of New Hampshire*, 82 NH PUC 808, 809 (1997) and *New England Telephone and Telegraph Company d/b/a NYNEX*, 80 NH PUC 437, 441 (1995).

In a letter filed April 15, 2002, Commission Staff (Staff) indicated they had requested the customer-specific information pursuant to Staff Third Set of Data Requests. Staff stated the information was necessary to their review of customer billing practices, customer credits, and test year treatment. Staff concurred with Northern's Motion.

Northern stated in their Motion that Office of the Consumer Advocate (OCA) was contacted and took no position with respect to the Motion.

II. COMMISSION ANALYSIS

RSA 91-A:5,IV contains no specific exemption for customer-specific information from the general rule favoring

disclosure of information held by public bodies. No other statute or administrative rule declares customer-specific information maintained by utilities and submitted to this Commission as confidential. When no specific statutory exemption exists, the Commission has long applied a balancing test as set forth in *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997) to determine the confidentiality of material. (See also, *Re NET*, 74 NHPUC 307 (1989); *Re Eastern Utilities Association*, 76 NHPUC 236 (1991); *Re NET*, 80 NHPUC 437 (1995)).

Under administrative rule Puc 204.06, the Commission considers whether the information, if made public, would likely create a competitive disadvantage for the petitioner; whether the customer information is financially or commercially sensitive, or if released, would likely constitute an invasion of privacy for the customer; and whether the information is not general public knowledge and the company takes measures to prevent its' dissemination. This administrative rule is consistent with the NH Supreme Court's interpretation of RSA 91-A:5,IV which requires an analysis of both whether the information sought is "'confidential, commercial, or financial information,' and

whether disclosure would constitute an invasion of privacy." *Id.* at 552 (emphasis added).

To effectuate the purpose of RSA 91-A, ("to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people") New Hampshire places a heavy burden to shift the balance toward nondisclosure. *Union Leader v. City of Nashua*, 141 N.H. 473, 476 (1996).

Notwithstanding this burden, expectations of privacy have emerged in students' names and addresses and the names of their parents. *Brent v. Paquette*, 132 N.H. 415, 425 (1990).

Police investigative files are protected. *Union Leader* at 477. Personal financial information held by the N.H.

Retirement System is exempt from disclosure. Op. Atty. Gen. No. 97-2, May 8, 1997. The Attorney General reasoned that

retirees had a significant privacy interest in the release of their personal financial information that outweighed any public interest in the information for purposes of shedding light on the State's conduct. *Id.* at 2. Public assistance

records are expressly confidential pursuant to RSA 167:30.

Department of Employment Security records are confidential under RSA 282-A:118. Also, all records compiled pursuant to New Hampshire's enhanced 911 system are deemed confidential.

The case law and statutory exemptions intimate that a person has an expectation of privacy with respect to information containing their name, address, and financial information.

In the context of telecommunications deregulation, in *New England Telephone and Telegraph Company, d/b/a NYNEX (Auditel)*, 80 NHPUC 437, (1995) the Commission discussed the confidentiality of Customer Proprietary Network Information (CPNI). CPNI consists of information about a telephone customer's use of the network, calling patterns, service location, and number of lines ordered and would be important information to competing telephone companies. The Commission concluded telephone customers have proprietary and privacy interests in their CPNI and that we would not make public CPNI. The Commission cited Federal Communications Commission rulings establishing rules governing access to CPNI which require prior authorization by customers. *Id.* at 445. Presently, the 107th Congress is considering an amendment to 47 U.S.C. § 222, Communications Act of 1934, to require affirmative written consent by a customer to the utility company's release of customer proprietary network information. (S. 1928, 107th Cong., 2d Sess. (2001))

In *Northern Utilities, Inc.*, 84 NH PUC 27 (1999), the Commission granted protective treatment for customer-

specific information relative to a Data Request concerning Northern's transfer of its' Gosling Road Lateral in Newington, New Hampshire to Granite State Transmission, Inc. We find no reason to depart from holding similarly here.

The Commission recognizes that customer-specific information, including names, and account numbers is necessary to the review of the rate case filing by the Commission, Staff and OCA. Notwithstanding the necessity of the information, the Commission finds the public's review of the non-confidential documents in DG 01-182 are sufficient to satisfy the Commission's obligations under RSA 91-A in having its files accessible to the public to document the Commission's performance of its duties. The private customer-specific information does not shed significant light on the Commission's functions to outweigh the significant privacy interest inherent in that information. Thus, based on Northern's representations, we find that the benefits to Northern's customers of non-disclosure in this case outweigh the benefits to the public of disclosure. The information, therefore, is exempt from public disclosure pursuant to RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.06.

III. MOTION REGARDING EMPLOYEE INFORMATION

On April 24, 2002, Northern filed a Motion for Protective Order and Confidential Treatment with respect to employee information, such as name and wage, contained in Attachment B of Audit Data Request No. 6, pursuant to RSA 91-A:5, IV and Admin. Rule Puc 204.06. This information was submitted to the Commission in connection with the Commission Staff's audit of the Company conducted as part of the base rate investigation in this docket. The motion stated that if the information is not protected from public disclosure, Northern and its employees may be harmed. The Company claimed that Northern's employees have a reasonable expectation of privacy regarding personal information such as salary, and Northern could be placed at a disadvantage in future employee compensation negotiations should the information become public.

IV. COMMISSION ANALYSIS

N.H. Admin. Rule Puc 204.06 provides that "the Commission shall grant confidentiality upon its finding that the documents sought to be made confidential are within the exemptions permitted by RSA 91-A:5,IV, or other provisions of law based on the information submitted. . . ." RSA 91-A:5, IV provides an exception for public disclosure of any "[r]ecords

pertaining to internal personnel practices [and] confidential, commercial or financial information." Interpreting the provision, the New Hampshire Supreme Court provided an analytical framework for employing this exception in *Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540, 552 (1997), as determining "whether disclosure would constitute an invasion of privacy." The Court instructed agencies of state government to interpret this exemption narrowly, applying a balancing test in order to determine whether "the asserted private, confidential, commercial or financial interest" is outweighed by "the public's interest in disclosure." *Id.* at 553.

The issue of confidential treatment of employee compensation data has been raised before in *Re Union Telephone Company*, 81 NH PUC 525 (1996), where the Commission found that "the benefits of non-disclosure of all compensation data do not appear to outweigh the benefits of disclosure of the compensation data. . . . Utilities must file with the Commission annual reports pursuant to RSA 374:13. These reports, which are publicly available, require disclosure of compensation for the utility's officers. . . . As to these officers, we will deny Union's Motion. For all other employees for whom protection is requested, we find the

information to be exempt from public disclosure under RSA 91-A:5,IV in that it is financial and personnel information which Union has traditionally kept confidential." Id. at 526. The Commission similarly granted protection to employment information that had not been previously released in an annual report. *Pennichuck Water Works*, DG 01-081, Order No. 23,842, dated November 16, 2001.

In applying the balancing test and based on Northern's representations and the Commission's previous treatment of similar information, the Commission finds the benefits to the Company of non-disclosure of portions of employee compensation data not already made public outweigh the benefits to the public of disclosure. The Commission finds that the information is exempt from public disclosure pursuant to RSA 91-A:5,IV and Puc 204.06.

Based upon the foregoing, it is hereby

ORDERED, that Northern's Motion for Protective Order and Confidential Treatment with respect to customer information is GRANTED; and it is

FURTHER ORDERED, that the Motion for Protective Order and Confidential Treatment with respect to employee compensation data not previously disclosed or made public in

annual reports or other publications by the Company is GRANTED; and it is

FURTHER ORDERED, that Northern's Motion, to the extent it relates to compensation of officers, board of directors, or other employees identified or made public in annual reports or other public documents is DENIED in part; and it is

FURTHER ORDERED, that the protection afforded by this order extends to any additional discovery, testimony, argument or briefing relative to the confidential information; and it is

FURTHER ORDERED, that in future filings, Northern shall continue to submit, concurrent with its request for confidential treatment, both redacted and unredacted filings which the Commission shall protect from disclosure during the pendency of its review of the request for confidentiality, pursuant to N.H. Admin. Rules, Pus 204.06; and it is

FURTHER ORDERED, that this Order is subject to the ongoing authority of the Commission, on its own Motion or on the Motion of Staff or any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New
Hampshire this tenth day of May, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary