

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

UNITIL CORPORATION
AND
NORTHERN UTILITIES, INC.

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DG 08-048

MOTION FOR PROTECTIVE ORDER

Now comes Northern Utilities, Inc. (“Northern” or “the Company”), and respectfully requests that the New Hampshire Public Utilities Commission (“Commission”) grant a protective order for certain confidential information submitted in this proceeding, consistent with R.S.A. 91-A:5(IV) and N.H. Admin. Rules, Puc 204.06. Specifically, the Company requests confidential treatment for its response to the following information requests: (1) ODR 1-5, which requests Granite State Gas Transmission’s (“Granite’s”) current tax basis; (2) Staff 1-135, which requests Northern’s and Granite’s Integrity Management Plans (“IMPs”); (3) Staff 1-136, which requests the forecasted costs associated with Granite’s IMP; (4) Staff 1-144, which requests the NiSource Inc. (“NiSource”) basis for the sale of Northern and Granite; (5) Staff 1-145, which requests information regarding the competitive participants and bids for Granite and Northern; and, (6) Staff 1-170, which is an analysis provided by Granite of its revenue deficiency.

The information in ODR-1-5, Staff 1-144, Staff 1-145 and Staff 1-170 should be protected from public disclosure because this information constitutes a highly sensitive business secret.

The information in Staff 1-135 and Staff 1-136 should be protected from public disclosure because the Granite information constitutes sensitive and confidential infrastructure system information for a non-jurisdictional interstate pipeline.

Notwithstanding this request for an order protecting the information from public disclosure, Northern will make the information from in Staff 1-144 and Staff 1-145 available to the Consumer Advocate ("OCA") and the Commission Staff consistent with the requested Protective Order. Northern will also make the material available to the OCA and the Commission Staff's consultants, consistent with the requested protective order.

Northern will make the information from ODR 1-5, Staff 1-135, Staff 1-136 and Staff 1-170 available to the OCA and the Commission Staff consistent with the requested Protective Order. Northern will also make the material available to the OCA and the Commission Staff's consultants, as well as any other party consistent with a mutually executed non-disclosure agreement and certification, consistent with the requested protective order.

In support of this Motion, Northern would state as follows.

With regard to Staff 1-144 and Staff 1-145:

1. The response to Staff 1-144's request as to the basis for NiSource's and Bay State Gas Company's ("Bay State's") decision to sell Northern and Granite constitutes a business secret that is derived from the Capital Project analyses conducted at the highest levels of the corporation and which are closely held within the corporation, but for a very small number of people with a direct need to know. The material in Attachment Staff 1-144 is never made public and is used for executive level decision making and is ultimately used to advise the Board of Directors. The Attachment to Staff 1-144 is a confidential and proprietary business secret and should not be disclosed.

2. The response to Staff 1-145's request for the terms of other bids provided and information, therefore, about the other participants in the competitive bidding process for Northern and Granite also constitutes a highly confidential business secret. Blackstone Group, Northern and NiSource's agent for the sale process, made the process confidential and proprietary and assured bidders of the confidentiality both of their participation and their bids.

Clearly, NiSource's and Bay State's evaluation of those bids constitutes a business secret because of the nature of the information and because it resulted from a competitive bidding process. NiSource's and Bay State's evaluative techniques constitute a proprietary business secret. The materials in Attachment Staff 1-145 (a) through (d) are closely held within the corporation, but for a very small number of people with a direct need to know. The information in Attachment Staff 1-145 (a) through (d) is never made public and is used for executive level decision making and is ultimately used to advise the Board of Directors. The Attachments to Staff 1-145 is a confidential and proprietary business secret and should not be disclosed.

With regard to ODR 1-5, Staff 1-135, Staff 1-136 and Staff 1-170:

3. Granite's response to ODR 1-5 requires Granite to divulge its tax basis. This is confidential tax information that is not disclosed publicly by Granite. Tax information is normally accorded confidential treatment. Accordingly, the Attachment to ODR 1-5 should be granted protection from public disclosure.

4. Granite's response to Staff 1-135 requires Granite to provide its DOT mandated IMP with regard to its New Hampshire facilities. It also provides Granite's expenses to date. Staff 1-136 seeks similar information regarding the forecasted expenses associated with Granite's IMP. None of these materials would ever be available in the public domain, and therefore, Granite seeks protection from public disclosure. Granite's IMP, provided in Staff 1-135 A, provides critical infrastructure information that Granite only provides to agencies under a promise of protection, because of Granite's status as an interstate pipeline. In addition, the costs to date and the forecasted costs associated with the limited project under the IMP upgrades are not and would not be publicly available. They constitute a business secret of Granite. In addition, they may impact Granite's ability to maintain competition in the market for its construction business: Granite's ability to obtain competitive bids may be impacted by the release of this information to the public. Accordingly, the Attachments to Staff 1-135 and Staff 1-136 should be accorded protection from public disclosure.

5. Granite's response to Staff 1-170 provides an analysis showing Granite's revenue requirement. This information is closely held and never released without the filing of a rate proceeding at the Federal Energy Regulatory Commission. For this reason, and in light of Granite's cooperation in this proceeding, Attachment Staff 1-170 should be protected from public disclosure.

6. Each piece of information for which Northern seeks protection constitutes a highly sensitive business secret of the type that is not disclosed and that should not be disclosed to the public.

7. R.S.A. 91-A:5(IV) expressly exempts from the public disclosure requirements of the Right-to-Know law, R.S.A. 91-A, any records pertaining to "confidential, commercial or financial information." The Commission's rule on confidential treatment of public records, Puc 204.06, also recognizes that confidential, commercial or financial information may be appropriately protected from public disclosure pursuant to an order of the Commission.

8. Northern's request for a protective order is not inconsistent with the public disclosure requirements of the Right-to-Know law, R.S.A. 91-A. This statute generally provides open access to public records but specifically recognizes that "records that would be within the scope of a privilege against discovery or used as evidence recognized by the court" may be protected from public disclosure. The determination whether to disclose confidential information involves a balancing of the public's interest in full disclosure with the countervailing commercial or private interests for non disclosure. Union Leader v. New Hampshire Housing Finance Authority, 142 N.H. 540 (1997).

9. The commercial and financial interests set forth herein sufficiently outweigh the public interest in full disclosure. Moreover, Northern's request assures access, subject to protection, for the Commission Staff, the OCA, and the Staff's or the OCA's consultants consistent with the requested protective order for each of these requests. With the exception of Northern's response to Staff 1-144 and Staff 1-145, these responses are available to other parties upon execution of a mutually agreeable non-disclosure agreement and certification.

10. Pursuant to N.H. Code Admin. Rule Puc 203.04(e), Northern will report by separate letter whether assent is provided by the Commission Staff, the OCA and other parties to this request.

WHEREFORE, Northern respectfully requests that the New Hampshire Public Utilities Commission issue an order protecting the confidential information specified herein from public disclosure.

Respectfully submitted,
NORTHERN UTILITIES, INC.

By its attorney,

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