

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Re: EnergyNorth Natural Gas, Inc. d/b/a National Grid NH

Docket DG 10-017

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

EnergyNorth Natural Gas, Inc. d/b/a National Grid NH ("National Grid NH" or the "Company"), in accordance with Puc 203.08, hereby moves the New Hampshire Public Utilities Commission (the "Commission") to grant confidential treatment to certain information (1) provided to the Commission Staff and Intervenors in the course of the discovery process in the above-captioned docket; (2) provided to the Commission Audit Staff in the course of the audit conducted in connection with the above-captioned docket; and (3) provided to the Commission in connection with the supplemental testimony of Frank Lombardo. In support of its motion, National Grid NH states as follows:

1. During the course of the discovery process, National Grid NH provided responses to several hundred data requests propounded by the Staff, Office of the Consumer Advocate ("OCA"), and intervenor Pamela Locke. Twenty six (26) of these responses contained confidential information that National Grid NH provided only to the Staff, OCA, and Pamela Locke pursuant to signed confidentiality agreements. Rather than seek confidential treatment for each data response, National Grid NH submitted its confidential responses accompanied by written statements of intent to file a motion pursuant to Puc 203.08(d). The data request responses for which the Company seeks protective treatment are as follows:

- a. OCA 1-7; 1-43; 1-120; 2-28; 2-43; 2-101 Supplemental; 2-118; 3-2; 3-6; 3-6 Supplemental; 3-9

- b. Staff 1-2; 1-13 Supplemental; 1-15; 1-61; 1-69; 1-71; 1-80; 1-137; 1-142; 1-213; 2-25; 2-88; 3-28; 3-49; 3-55

2. Shortly after National Grid NH filed its request for an increase in rates, the Commission's Audit Staff commenced an audit of the Company. The Company's responses to Audit Staff Requests 18, 30 and 31 contained confidential information. National Grid NH submitted its confidential responses to Audit Staff Requests 30 and 31 accompanied by written statements of intent to file a motion for confidential treatment pursuant to Puc 203.08(d). The Company submitted its confidential response to Audit Staff Request 18 accompanied by a notice stating that the information had already been provided to the Commission as part of the Company's request for an increase in rates pursuant to Puc 1604.01(a)(14), and that it was subject to a pending motion for confidential treatment. The Commission granted that motion, subject to certain conditions, in Order No. 25,119 (June 25, 2010).

3. On September 13, 2010, National Grid NH submitted supplemental testimony of Frank Lombardo relating to certain expenses that the Company removed from its proposed revenue requirement. The Company submitted Attachment FL-S1 to Mr. Lombardo's supplemental testimony on a confidential basis, accompanied by a written statement of intent to file a motion for confidential treatment pursuant to Puc 203.08(d).

I. The Commission Should Extend the Confidential Treatment Previously Granted in Order No. 25,119 to Certain Data Request and Audit Staff Request Responses in This Docket

4. In a prior order in this docket, the Commission granted confidential treatment to officer compensation information. *See EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 10-017, Order No. 25,119 (June 25, 2010). The Company now seeks confidential treatment of similar information in response to the following data requests and Audit Staff requests:

- a. **OCA 1-7:** “Refer to Volume 2B, Tab 5 [Confidential]. For each individual listed, please specify the allocation factor(s) and the dollar amount for the portion of salary charged to the Company during 2008 and 2009 and included in test year expenses. Please ensure that all amounts are provided in US dollars.”¹
- b. **OCA 2-43:** “Reference the redacted Attachment to OCA 1-7, p. 2. For each of the 10 amounts in the far right column labeled "Charged in Test Year 12 mths ended June 30, 2009," please explain the derivation of the amount shown. Please include both a numerical calculation showing the derivation of the amount and a narrative explanation of the calculation (ex. the amount shown is an average of quantity "A" and quantity "B".)
- c. **Staff 1-69:** “Ref. Principal Officers Compensation for 2008 and 2009 (Confidential). Illustrate how the 2008 and 2009 Stavropoulos Annual Award Paid was calculated in compliance with the Annual Incentive Compensation and Gainsharing / Performance for Growth Plans in effect for those periods and provide supporting work papers. If the Annual Award Paid includes any other payments than those earned under the 2008 and 2009 plans explain.”
- d. **Staff 1-71:** “Ref. Principal Officers Compensation for 2008 and 2009 (Confidential). Did the Principal Officers receive any compensation other than Direct Compensation? If so, describe the compensation, the amount of compensation, amount charged to National Grid NH and the basis for the charges to National Grid NH.
- e. **Audit Staff Request 18:** “Please provide a list of EnergyNorth’s Principal Officers with the bonus amount in the EnergyNorth test year to each. Please also provide allocation percentages.”
- f. **Audit Request 30:** “Please see Company response to audit e-mail #18, Executive pay. (Confidential)
 - (A) Please provide a schedule for each Principal Officer showing the Energy North test year charge for Gainsharing and also for Management Incentive Compensation.
 - (B) For the test year please provide the EnergyNorth total charge for Gainsharing and also for Management Incentive Compensation.”

¹ Though the request refers to “Volume 2B, Tab 5 [Confidential],” there is no such “confidential” tab in the Company’s filing. Given the overall context of the data request, it is clear that the intended reference was to Schedule 1604.01(a)(14), the confidential schedule of officers and their related compensation for 2008 and 2009 submitted with the Company’s rate case filing in accordance with Puc 1604.01(a)(14). This schedule was included in Volume 2B, Tab 14. Therefore, the Company submitted its response to OCA 1-7 based upon the confidential version of Schedule 1604.01(a)(14).

5. The information submitted in response to the above requests should be exempted from disclosure pursuant to RSA 91-A:5, IV, which protects “personnel . . . and other files whose disclosure would constitute an invasion of privacy.” As the Commission has frequently noted, New Hampshire courts apply a three-step analysis when considering whether disclosure of governmental records constitutes an invasion of privacy. First, the Court evaluates whether there is indeed a privacy interest at stake that would be invaded by disclosure; second, whether there is a public interest in disclosure; and third, whether the public interest in disclosure outweighs the individual privacy interest in nondisclosure. *See Lamy v. N.H. Pub. Util Comm’n*, 152 N.H. 106, 109 (2005); *N.H. Civil Liberties Union v. City of Manchester*, 149 N.H. 437, 440 (2003).

6. There is a clear privacy interest in the officer compensation information provided in response to the above requests. This information is not disclosed to the public, as it is the Company’s practice to maintain private personnel information, including any materials or data specific to individual employees, in strict confidence. Specifically:

- a. Data responses OCA 1-7 and 2-43 contain confidential compensation amounts of Company officers, as well as the allocation percentages applied to each officer’s compensation to derive the amount charged to the Company.
- b. Data response Staff 1-69 contains an analysis of the performance award paid to Company officer Nickolas Stavropoulos, including the total award amount, the component elements of the award, and the deferred portion of the total award.
- c. Data response Staff 1-71 contains, *inter alia*, the dollar value of indirect compensation received by the officers listed on Schedule 1604.01(a)(14) in the Company’s rate case filing for the years 2008 and 2009.
- d. Responses to Audit Staff Requests 18 and 30 provide a revised version of Schedule 1604.01(a)(14) that adds a column containing the requested allocation percentages for each officer of the Company, but is in all other respects identical to the information for which the Commission granted confidential treatment in Order No. 25,119.

7. The compensation and allocation information provided in these responses is similar in nature and in some cases identical to information provided in the Company's rate filing for which Commission has already granted confidential treatment.

8. There is no significant public interest advanced by disclosure of the compensation information produced in the responses described above, and the Commission commonly grants requests for confidential treatment of officer and director salary information submitted pursuant to Puc 1604.01(14). *See, e.g., Pub. Serv. Co. of N.H.*, DE 06-028, Order No. 24,750 at 26 (May 25, 2007) (granting the utility's motion for confidential treatment of officer and director salaries on the grounds that such information is "similar to information for which the Commission has granted protective treatment in the past."). As explained above, the Commission has already granted conditional confidential treatment to officer compensation information in this case, subject to certain disclosure obligations. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 10-017, Order No. 25,119 at 11.

9. Because the Company has already disclosed aggregate officer compensation information in accordance with Order 25,119, the Commission should extend confidential treatment to the officer compensation information provided in data requests OCA 1-7; OCA 2-43; Staff 1-69; Staff 1-71 and Audit staff requests 18 and 30.

II. The Commission Should Grant Confidential Treatment to the Names of Non-Officer Company Personnel to Avoid an Unwarranted Invasion of Privacy

10. In addition to providing confidential compensation information for its officers, National Grid NH also provided responses to the following OCA and Staff data requests that describe expenses incurred or activities undertaken by specific non-officer employees:

- a. **OCA 2-101:** "The response to Staff 1-87 includes a breakdown of test-year costs for "Dues and Memberships." Please respond to the following questions about Attachment Staff 1-87.

a) P. 1 of 11 includes the amount of \$1,027.64 described as "Glen Cove Mansion." Please provide copies of the invoices related to this amount.

b) P. 3 of 11, includes two entries totaling \$31,530.90 for the "American Gas Association" (AGA). Please quantify the percentage or amount paid to the AGA, if any, that is allocated to the cost of lobbying and advertising by the AGA? Please provide copies of the invoices related to these entries.

c) P. 5 of 11 includes an amount of \$1,639.48 described as "Miscellaneous- Unidentified." Please provide a breakdown of this amount for all costs above \$100 and copies of related invoices."

b. **OCA 3-6 (in part):** "Please refer to the Company's responses to OCA 1-55 and OCA 2-63. . . . For the 30 largest amounts listed in Attachment OCA 1-55(a) (i.e., sort "Actual Amt" column), please provide all documentation related to these employee expenses."

c. **OCA 3-9:** "Please refer to the Company's response to OCA 2-101, Attachment OCA 2-101(a) and Supplemental Attachment OCA 2-101(a) (provided August 5, 2010).

(a) What was the purpose of the event at Glen Cove?

(b) Please provide a copy of the agenda.

(c) Please identify the employer and the positions of the individuals listed in Attachment OCA 2 101(a) and Supplemental Attachment OCA 2-101(a)."

d. **Staff 1-137:** "Please provide all historical Company discussions, communications, investigations, business case analysis and presentations regarding arrears, collections performance, bad debt, fraudulent activity and customer identification problems as it relates to the account initiation process. Please include information on the Experian study used to estimate the impact of the new account initiation strategy described in Mr. Hirschey's testimony, pages 25-26 of 30."

11. The Company seeks only to protect the names of its non-officer personnel in conjunction with specific expenditures, and not the amount or nature of the expenses incurred or the activities described, in its responses to these requests. Specifically:

a. Supplemental Attachment OCA 2-101 comprises a 44-page invoice from a hotel and conference center showing the accommodations charges (i.e., room charge

and associated taxes) incurred by employees attending a conference at that location.

- b. Attachment OCA 3-6(a) and Supplemental Attachment OCA 3-6(c) comprise documentation supporting certain employee expenses (e.g., invoices, check requests, and wire transfer authorizations related to employee insurance premiums and recruiting). Included in this documentation are the names of Company personnel involved in the administration of these expenses.
- c. The attachments to OCA 3-9 comprise an agenda containing the names of personnel presenting at a workshop attended by National Grid audit personnel, as well as a schedule setting forth the names and positions of the workshop attendees, all of whom are non-officer employees.
- d. Attachments Staff 1-137(n) and (o) contain report summaries for the Company's account initiation program, listing the names of various account initiation representatives and their respective team leaders. All of the named individuals are non-officer employees.

12. RSA 91-A:5, IV exempts "[r]ecords pertaining to internal personnel practices" as well as "personnel . . . and other files whose disclosure would constitute an invasion of privacy" from public disclosure, and the Commission has previously granted confidential treatment to non-officer personnel information that is not otherwise publicly disclosed. *See, e.g., Northern Utilities, Inc.*, DG 01-182, Order No. 23,970 at 8-9 (May 10, 2002) (protecting employee names and wages).

13. The Company's non-officer employees have an expectation of privacy in their names when linked to specific expenditures, and while it is expected that certain expenses or activities of such employees will be subject to scrutiny in a rate case, it is not expected that the fact that an individual employee incurred particular expenses or engaged in a particular activity will be subject to public disclosure.

14. The Company is concerned that public disclosure of the names of its non-officer employees in connection with expenses for which the Company is seeking recovery may expose those employees to an invasion of their privacy by the media or other members of the public. In

all of the responses described below, the Company only seeks confidential treatment of the employees' names, and not the related expense or activity information. As such, disclosure of this information will not provide the public with information about the conduct or activities of the Commission or other parts of New Hampshire state or local government, *see Public Service Co. of N.H.*, DE 09-158, Order No. 25,059 at 14-15 (December 31, 2009), and there is no public interest that outweighs the privacy interest of the Company's employees.

15. Public disclosure of the names of the Company's non-officer employees in association with specific expenditures or activities that are part of the Company's rate case will expose those employees to a potential invasion of privacy. Furthermore, public disclosure will not reveal information about the conduct or the activities of the Commission or other parts of New Hampshire state or local government, and there is no significant public interest outweighing the employees' privacy interest. For these reasons, the Company should grant confidential treatment to the employee names as described below.

III. The Commission Should Grant Confidential Treatment to Individual Customer Information

16. National Grid NH also submitted responses to the following data requests from the OCA and Staff requesting information relative to the Company's customers:

- a. **OCA 2-118:** "For each of the 6 largest charge off amounts for residential customer and 6 largest for Commercial & Industrial accounts included in the spreadsheet labeled "Staff 1-13 Supplemental Attachment B (CONFIDENTIAL).XLS" (as defined by amounts shown in Column P labeled "CHARGE OFF AMOUNT") during the test year (as defined by date shown in Column O labeled as "CHARGE OFF DATE") please provide a "Chronology of Arrears Accrual" chart similar to those in the testimony of Mark Hirschey on Bates pages 45-46 labeled Attachment MUH-13 and MUH-14 respectively. Please identify the charts provided in the response by Account Number, Charge Off Date, and Charge Off Amount in order to trace the charted information back to the spreadsheet."

- b. **OCA 3-2:** "Please produce ten reports (e.g., work orders) from field workers for work that was booked under Account 1761 and that reference work on services which is booked in Account 1761."
- c. **Staff 1-13:** "For the period of 2005-2009, please provide detailed data on all accounts charged off by the Company, including account information, as well as historical billing, payment and collection treatment activities."
- d. **Staff 1-213:** "Please provide actual load growth per meter that has occurred on the Nashua System by address on a design hour basis (mcfh), peak hour basis (mcfh), peak month basis and annual usage basis. If easier, provide a Customer Information System based spreadsheet for the Periods of July 2007 through June 2009 for those new customers associated with the Nashua System that have come on to the system during that period."
- e. **Staff 2-25:** "Regarding Mr. Hirschey's testimony on population density and charge-off rates (page 7 of 30, lines 1-14), please provide a full list of account numbers used in the analysis depicted in Attachment MUH-14."
- f. **Staff 2-88** referenced a chart attached to the Staff's second set of data requests and asked that the Company answer questions pertaining to items included in Supplemental Attachment Staff 1-13(b) (described above). The Staff submitted its questions in redacted and confidential format to protect customer account numbers contained in the questions.
- g. **Staff 3-28** references Attachment OCA 2-118(b), which details collections activity specific to individual customer accounts and for which the Company has sought confidential treatment (see above), and requests that the Company "provide the actual monthly bills in each month/year for the accounts covered by the charts in the attachment."

17. The Company's responses to these requests contain identifying information for many of its residential and commercial customers, including names, street addresses, and account numbers. Much of this information is provided in conjunction with information about individual customer arrearages and the Company's efforts to collect past due amounts. Specifically:

- a. The attachments to the Company's response to OCA 2-118 contain the names and account numbers of the six commercial and industrial customers and six residential customers whose accounts represent the largest charge-off amounts for each respective class, as well as charts detailing collections activity specific to each listed account.

- b. Attachment OCA 3-2 comprises field reports from a 2007 walking survey conducted by KeySpan Energy Delivery in Concord, New Hampshire. Each field report includes the street address of a customer.
- c. Supplemental Attachment Staff 1-13(b) is a spreadsheet containing the names, home addresses, account numbers, and meter identification numbers of thousands of residential and commercial customers with arrearages from 2005 to 2009.
- d. Attachment Staff 1-213 is a table showing new customers that came onto the Nashua system between July 2007 and June 2009. The table includes the account numbers and street addresses of individual customers.
- e. Attachment Staff 2-25 is a table including account numbers for individual customers, as well as corresponding arrearage amounts.
- f. Many of the Company's answers to the questions in Staff 2-88 contain individual customer account numbers, as well as corresponding balance or arrearage information.
- g. Attachments Staff 3-28(a) and (b) are tables detailing the monthly bill amounts for the individual residential and commercial customers identified by name and account number in Attachment OCA 2-118(b). These customers are identified by account number in Attachments Staff 3-28(a) and (b).

18. As noted above, RSA 91-A:5 sets forth exemptions to the general rule that every citizen has the right to inspect records in the possession, custody, or control of the Commission.

Specifically, RSA 91-A:5, IV protects "files whose disclosure would constitute an invasion of privacy," as well as "confidential, commercial, or financial information."² Information pertaining to individual residential customers, as well as individually named third party rental agents, implicates both of these exemptions, and should be granted confidential treatment in this case.

19. The New Hampshire Supreme Court and the Commission have long recognized a privacy interest in the names and addresses of residential customers, and have granted confidential

² The three-pronged test applied by the Commission to determine whether commercial or financial information should be deemed confidential is substantively similar to that applied by the Commission when considering whether disclosure will constitute an invasion of privacy. *Compare Northern Utilities, Inc.*,

treatment to such information accordingly. *See, e.g., Lamy*, 152 N.H. at 110 (*citing Brent v. Paquette*, 132 N.H. 415, 428 (1989)); *EnergyNorth Natural Gas, Inc.*, DG 06-045, Order No. 24,657 at 10 (August 24, 2006). The Commission has also granted confidential treatment to customer-specific information such as account numbers. *See Northern Utilities, Inc.*, DG 01-183, Order No. 23,970 at 6 (May 10, 2002). “[D]isclosing a person’s name and address implicates that person’s privacy rights because the disclosure serves as a conduit into the sanctuary of the home.” *Lamy*, 152 N.H. at 110. An individual’s privacy interest increases when names may be tied to financial information. *Id.*; *see also EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 10-017, Order No. 25,119 at 7.

20. Furthermore, while the Supreme Court in *Lamy* did not recognize a privacy interest in the names and addresses of commercial and industrial customers appearing in isolation, *Lamy*, 152 N.H. at 109-110, the Commission has recognized a privacy interest in such information when associated with additional commercial and financial data and granted confidential treatment accordingly. *See Public Service Co. of N.H.*, DE 09-158, Order No. 25,059 at 14-15.

21. The Company’s individual customers have a privacy interest in their names, street addresses, account numbers, and other identifying information included in the above responses, and it is the policy of the Company to maintain confidentiality for this information. Public disclosure of identifying details may expose the Company’s residential and commercial customers to unwanted scrutiny or solicitation. Furthermore, as much of the information provided in the above responses correlates to individual arrearage amounts and collection efforts, the risk of public embarrassment for the Company’s customers is extremely high.

DG 10-034, Order No. 25,085 at 8 (March 25, 2010) and *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 10-017, Order No. 25,119 at 6.

22. The Company's commercial and industrial customers would also suffer competitive harm if their names are publicly disclosed in connection with arrearage amounts or collections efforts, as their competitors could gain insight into their financial affairs and use that information to their advantage.

23. As noted above, the Commission has granted confidential treatment to customer names, street addresses, account numbers, and other identifying information in the past. Moreover, public disclosure of this information "[will] not provide the public with information about the conduct or the activities of the Commission or other parts of New Hampshire state or local government," *Id.* at 14, and there is no public interest outweighing the privacy interest held by the Company's customers. Thus, the Commission should grant confidential treatment to the customer-specific information described above.

IV. The Commission Should Grant Confidential Treatment to Proprietary and Competitively Sensitive Information of the Company and Entities with Which the Company Does Business

24. RSA 91-A:5, IV states, in relevant part, that records pertaining to "confidential, commercial, or financial information" are exempt from public disclosure. As noted above, the Commission has routinely recognized that confidential treatment should be granted to competitively sensitive or proprietary information under the 91-A:5 exemption for "confidential, commercial, or financial information." *See, e.g., Northern Utilities, Inc.*, DG 10-034, Order No. 25,085 at 9; *Unitil Corp. and Northern Utilities, Inc.*, DG 08-048, Order No. 25,014 at 6 (Sept. 22, 2009). For the reasons set forth below, the Commission should similarly grant confidential treatment to the following data requests.

a. Response to Data Request OCA 1-43

25. Data request OCA 1-43 sought the following:

On page 14 (Bates p. 16), at lines 7-9, Mr. Lombardo and Mr. Adams refer to Exhibit 2-2, Schedule 1 - Operating Revenues. Line 7, "Non-Core," shows \$720,586 for the twelve months ending June 30, 2009 and the pro forma test year as "Margin." Please explain.

26. The Company's response explains that the \$720,586 referred to in the OCA's data request is revenue associated with special individually negotiated contracts with a specific customer. The Company only seeks to keep the name of the customer, as used in conjunction with the specific amount of revenues stated in OCA 1-43, confidential.

27. National Grid NH and the customer both have a privacy interest in the customer's name as used in this data request response. The specific revenues described in the request and the response are the result of a negotiated agreement between the Company and the customer, and disclosure of the customer's name in conjunction with a specific amount of revenues will expose competitively sensitive information, such as the customer's amount of energy usage, to competitors.

28. While the public has an interest in knowing the source of the Company's operating revenues submitted as part of its rate case, disclosing the name of a specific customer in conjunction with those revenues would shed little light on the Commission's activities. Disclosure of the detailed customer specific information under these circumstances would not provide the public with information about the conduct or activities of the Commission or other parts of New Hampshire state or local government in this instance, and thus there is no public interest outweighing the demonstrated privacy interest of National Grid NH and its customer.

29. Moreover, the Commission recognizes a privacy interest in the names of commercial and industrial customers when associated with sensitive commercial and financial data, and has granted confidential treatment accordingly. *See Public Service Co. of N.H.*, DE 09-158, Order No. 25,059 at 14-15.

30. If name of the customer is disclosed in connection with the amount of revenues derived from the special contract that National Grid NH entered into with that customer, then the customer may suffer competitive harm. A customer's competitors may ascertain the amount of energy used by the customer and thereby gain important information concerning the customer's cost of doing business. This is competitively sensitive information that competitors may use to their advantage.

31. The Commission has granted confidential treatment to such information in the past, *see, e.g., Public Service Co. of N.H.*, DE 03-200, Order No. 24,333 at 7 (June 11, 2004), and the Commission should likewise grant confidential treatment to the customer's name in the Company's response to OCA 1-43.

b. Responses to Data Requests OCA 1-120, OCA 2-28, and Staff 3-49

32. Data request OCA 1-120 sought the following:

Please provide the accounting cost of service study, the marginal cost study and all underlying workpapers in electronic format (*i.e.*, excel not adobe acrobat). To the extent that the documents are spreadsheets please provide them with all cell references and formulae intact.

Data request OCA 2-28 sought the following:

Prior to the allocated cost of service study in the instant case, please provide a copy of the Company's most recent allocated cost of service study in electronic format with all formulae intact.

Data request Staff 3-49 requests a corrected and updated version of the marginal cost study as a follow-up to the Company's assertion in its response to data request Staff 1-171 that the original marginal costs study contained a cell reference error.

33. The spreadsheets provided as Attachments OCA 1-120(a) and (b), Attachment OCA 2-28, and Attachment Staff 3-49 contain proprietary models created by the Company's consultant, Management Applications Consulting, Inc. ("MAC"), that constitute confidential trade secrets.

MAC unquestionably has a privacy interest in these proprietary models, having invested considerable time and resources into their development. MAC derives a competitive advantage from these proprietary models, and if the spreadsheets are not granted confidential treatment, MAC's competitors will have access to and be able to make use of them for their own financial gain, thereby eliminating MAC's competitive advantage and causing it serious, irreversible harm.

34. There is no public interest served by disclosure of MAC's proprietary models. The Company does not seek confidential treatment of the information provided in the spreadsheets, and therefore there is no public interest outweighing MAC's privacy interest and the competitive harm that MAC will suffer as a result of disclosure.

35. Moreover, if the Commission declines to grant confidential treatment to Attachments OCA 1-120(a) and (b), Attachment OCA 2-28, and Attachment Staff 3-49, it will set a precedent that may increase the difficulty for parties appearing in future proceedings to engage consultants who utilize their own proprietary information, which is likely to adversely affect the quality of the analytical undertaking by the Commission and the parties appearing before it.

36. The Commission granted confidential treatment to one of MAC's proprietary models in a prior docket, finding that it had granted such treatment to similar information in the past and accepting the petitioning utility's argument that the information was exempt from disclosure under RSA 91-A:5, IV as confidential, commercial, or financial information. *Unitil Energy Systems, Inc.*, DE 05-178, Order No. 24,677 at 13-14, 23 (October 6, 2006). The Commission should likewise grant confidential treatment to MAC's proprietary models in this case.

c. Response to Data Request Staff 1-2

37. Data request Staff 1-2 sought the following:

For each arrangement with outside service providers, please provide a copy of the request for services issued by the company, a summary of bid responses, explanation for selection, copy of contract, the estimated cost of each service. For any arrangement not arranged through an RFP or similar process, provide any documents reflecting the process for the solicitation and engagement of the service provider(s), the terms of the engagement, including the scope and estimated cost, and an explanation for not using an RFP or similar process.

38. Attachments Staff 1-2(a) through (f) contain, among other things, proposals from the outside service providers engaged by the Company for assistance with this case, documentation related to the Company's internal requisition process, and the contracts between the Company and each provider. The proposals submitted by the service providers include competitively sensitive information such as cost estimates, pricing for services, and hourly billing rates. The Company seeks confidential treatment for this competitively sensitive information.

39. The rate and pricing information provided in the vendor proposals is confidential, competitively sensitive business information in which the Company and its service providers have a privacy interest. The Commission has previously recognized that National Grid NH and its service providers have a privacy interest in such information. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 08-009, Order No. 25,064 at 11-12 (January 15, 2010).

40. Disclosure of pricing information, hourly rates, and overall cost estimates as set forth in the proposals will cause National Grid NH and its service providers competitive harm. Specifically, disclosure of this information will put the Company's service providers at a competitive disadvantage by divulging to competitors the rates that they charge for services. The providers' competitors would use such information to their strategic advantage when competing for work in the future. Furthermore, disclosure of the service providers' rate and pricing information will erode the providers' respective abilities to maintain a strong position when bidding for work in the future.

41. Public disclosure may also cause consultants and other vendors to refrain from competing for work with the Company or other petitioners appearing before the Commission. Ultimately, this would harm ratepayers who would bear the burden of lost savings that would otherwise result from a competitive bidding process.

42. To the extent that there is any public interest in access to the rate and pricing information in these proposals, it is minimal. The vast majority of the information in the proposals provided in response to Staff 1-2 is not redacted, and the ultimate cost of these engagements will be submitted to and evaluated by the Commission.

43. The Company requested confidential treatment of similar proposals in Docket DG 08-009, and made similar arguments in favor of such treatment. The Commission found these arguments to be credible and concluded that the Company's interest in confidentiality outweighed public interest in disclosure, and granted the Company's motion. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 08-009, Order No. 25,064 at 11-12. The Commission should similarly grant confidential treatment to Attachments Staff 1-2(a) through (f).

d. Response to Data Request Staff 1-15

44. Data request Staff 1-15 sought the following:

Provide the dates and amounts LNG displaced through vaporization of LNG in Massachusetts and delivered to NH. Calculate the National Grid NH savings and provide supporting schedules.

45. Attachment Staff 1-15 provided the volumes, dates and savings for liquid natural gas ("LNG") displaced through vaporization in Massachusetts and delivered to National Grid NH, as well as pricing for the gas plus applicable trucking costs. The pricing as set forth in Attachment Staff 1-15 is the result of a negotiated contract between the Company and a supplier. The

Company and its supplier are active participants in the gas marketplace and seek confidential treatment of this pricing information, as well as savings information from which the pricing information may easily be extrapolated, to protect their competitive position, bargaining latitude and negotiating leverage in future transactions.

46. The rates charged to the Company by its supplier are negotiated with an expectation of confidentiality, and the parties have a privacy interest in pricing and related savings information. Disclosure will cause competitive harm to both the supplier and the Company, eroding their respective abilities to maintain a strong position when negotiating contracts in future business transactions. Specifically, public disclosure of these price terms or computations that are based on them could potentially impede, to the detriment of customers, the Company's ability to obtain similar or better rates from suppliers in the future. By compromising the Company's ability to negotiate the most favorable contracts for services, disclosure would ultimately harm ratepayers. Suppliers may also be reluctant to negotiate contracts with the Company in the future out of fear that confidential pricing information will be disclosed.

47. The Commission has granted confidential treatment to such pricing information in the past, *see EnergyNorth Natural Gas d/b/a National Grid NH*, DG 09-050, Order No. 24,963 at 20 (April 30, 2009), and should similarly grant confidential treatment to the pricing and savings information in Attachment Staff 1-15.

e. Response to Data Request Staff 1-61

48. Data request Staff 1-61 references a portion of Company witness Frank Lombardo's pre-filed testimony and asks that the Company "[d]escribe the changes in the office supply vendor contract [referenced in Mr. Lombardo's testimony], date implemented, anticipated annual

savings.” The Company provided the requested information in confidential and redacted versions on June 3, 2010.

49. The Company’s response to data request Staff 1-61 includes the anticipated annual savings across National Grid’s U.S. operations from a three-year office supply contract with Staples, as well as the amount of a sign-on bonus to the Company from Staples. The Company seeks confidential treatment for the amount of the sign-on bonus.

50. As noted above, the Commission has granted confidential treatment to supplier pricing information in the past. *See EnergyNorth Natural Gas d/b/a National Grid NH*, DG 09-050, Order No. 24,963 at 20. In this case, the amount of the sign-on bonus was negotiated with an expectation of confidentiality and Staples and the Company have a privacy interest in it. Disclosure of this information would not provide the public with information about the conduct or activities of the Commission or other parts of New Hampshire state or local government, and disclosure will cause competitive harm to both Staples and to the Company by eroding their respective abilities to maintain a strong position when negotiating contracts in future business transactions. For these reasons, the Commission should grant confidential treatment to the sign-on bonus amount in Attachment Staff 1-61.

f. Response to Data Request Staff 1-80

51. Data request Staff 1-80 references a portion of Company witness Frank Lombardo’s pre-filed testimony and asks that the Company “[p]rovide the request for bids used to procure a health care consultant, a copy of the consulting contract and reports provided by the consultant.”

52. Attachment Staff 1-80(b) comprises a report from the Company’s health care consultant, Towers Perrin, that includes negotiated 2009 and 2010 rates for medical and dental employee

plans in place at National Grid. The Company seeks confidential treatment for these negotiated rates.

53. The Company and the assorted medical and dental benefits providers with which it does business have a privacy interest in the negotiated rates that the Company pays. Disclosure will cause competitive harm to both the providers and the Company, eroding their respective abilities to maintain a strong position when negotiating rates in the future. For example, other potential providers will gain insight into what the Company is willing to pay for benefits and may use that information to their advantage in future negotiations with the Company. Providers may also be reluctant to negotiate favorable rates with the Company in the future out of fear that confidential pricing information will be disclosed.

54. The Commission has granted confidential treatment to pricing information in the past. *See EnergyNorth Natural Gas d/b/a National Grid NH*, DG 09-050, Order No. 24,963 at 20. Disclosure of this information would not provide the public with information about the conduct or activities of the Commission or other parts of New Hampshire state or local government, and the Commission should grant confidential treatment to the negotiated rates in Attachment Staff 1-80.

g. Response to Data Request Staff 1-137

55. Data request Staff 1-137 sought the following:

Please provide all historical Company discussions, communications, investigations, business case analysis and presentations regarding arrears, collections performance, bad debt, fraudulent activity and customer identification problems as it relates to the account initiation process. Please include information on the Experian study used to estimate the impact of the new account initiation strategy described in Mr. Hirschey's testimony, pages 25-26 of 30.

The Company provided the requested information in confidential and redacted versions on June 4, 2010.

56. Attachment Staff 1-137(b) is a copy of a power point presentation on the Company's "Data Hygiene and Data Sourcing" initiatives, which are intended to achieve savings in customer service and collections. The presentation also describes the bidding and selection process for the vendor to provide these services to the Company. Included at page eleven of Attachment Staff 1-137(b) is a summary of the pricing proposal for a six-year contract submitted by the low bidder (and most qualified vendor), Experian. The Company seeks confidential treatment for the incremental and annual costs submitted as part of Experian's pricing proposal.

57. Disclosure of Experian's proposed pricing information will cause Experian and National Grid NH competitive harm. Specifically, disclosure of this information will put Experian at a competitive disadvantage by divulging to its competitors information that they can use to their strategic advantage when competing for work in the future. Furthermore, disclosure of the service providers' rate and pricing information will erode Experian's ability to maintain a strong position when bidding for work in the future. Disclosure will also harm the Company, as other potential providers will gain insight into what the Company is willing to pay for these services and use that information to their advantage in future negotiations.

58. Public disclosure may also cause vendors to refrain from competing for work with the Company or other petitioners appearing before the Commission. Ultimately, this would harm ratepayers who would bear the burden of lost savings that would otherwise result from a competitive bidding process.

59. The Commission has granted confidential treatment to similar information in the past. *See EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 08-009, Order No. 25,064 at 11-12. Disclosure of this information would not provide the public with information about the conduct or activities of the Commission or other parts of New Hampshire state or local

government, and the Commission should grant confidential treatment to the sign-on bonus incremental and annual costs in Attachment Staff 1-137(b).

h. Response to Data Request Staff 1-142

60. Data request Staff 1-142 sought information regarding a recent attempt by the Company to sell a portfolio of bad debt, including, *inter alia*, “[a] copy of the proposed terms and conditions (i.e., proposed Purchase Agreement) of the sale proposed by the Company.” The Company provided its response to Staff 1-142, including the proposed purchase agreement as Attachment Staff 1-142(b), in confidential and redacted formats.

61. The Company’s narrative response to Staff 1-142 contains, on page three, the name of the potential purchaser of the Company’s bad debt portfolio. Moreover, the proposed purchase agreement included as Attachment Staff 1-142(b), which sets forth negotiated terms and conditions for the proposed transaction contains the name of the potential purchaser. The transaction ultimately did not occur, and the Company seeks confidential treatment only of the purchaser’s name in the response to Staff 1-142 and Attachment Staff 1-142(b).

62. The Company and the potential purchaser have an interest in keeping the potential purchaser’s name private and confidential to the extent that it appears in this draft contract. The parties entered into negotiations for the purchase of the Company’s bad debt portfolio with an expectation of confidentiality, and ultimately the sale did not occur. The Company may experience competitive harm if the name of the potential purchaser is disclosed in connection with the terms of the contract; entities interested in doing business with the Company may be reluctant to do so out of fear that their names may be disclosed in connection with proposed or negotiated terms for potential transactions. Furthermore, the fact that a potential purchaser sought to purchase a portfolio of bad debt from the Company but ultimately did not do so is

demonstrative of a business strategy that competitors can evaluate and use to their competitive advantage.

63. It is important to note that the proposed bad debt purchase was not consummated. To the extent that there is a public interest in the information contained in this contract, it is in the proposed terms of the purchase and not the name of the entity that sought to make the purchase. The proposed purchaser is not regulated by the Commission and never actually entered into a contractual relationship with the Company to purchase the portfolio of bad debt. As such, there is no public interest counterbalancing or outweighing the privacy interest articulated above. The Commission should therefore grant confidential treatment to the name of the potential purchaser in Attachment Staff 1-142(b).

i. Response to Data Request Staff 3-55

64. Data request Staff 3-55 put forth the following questions:

What were the company-wide earnings per share target and earning per share performance for the test year? Was the financial goal related to company-wide earnings fully attained or exceeded, and if not fully attained, what percentage was attained? What was the maximum amount of incentive pay and gainsharing that would have been paid out if the company-wide earning per share and individual elements had been fully attained?

The Company provided a response to data request Staff 3-55 on September 13, 2010.

65. The Company's response to data request Staff 3-55 included the National Grid plc earnings per share targets for the fiscal years ending March 31, 2009 and March 31, 2010, as well as the actual earnings per share performance for those fiscal years. The Company seeks confidential treatment of the dollar amounts of the earnings per share targets and the actual earnings per share performances.

66. The earnings per share target and actual amounts described in the Company's response to Staff 3-55 constitute highly confidential, commercially sensitive information relative to National

Grid's incentive pay program. This information is not publicly disclosed, and is only internally disclosed to a very select group of National Grid personnel. Public disclosure of the target amounts will cause competitive harm to National Grid, whose competitors would gain insight into the Company's projections of potential earnings. Disclosure would also provide investors with non-public information regarding the relationship between the Company's actual earnings and management's view of the Company's potential performance.

67. This information constitutes highly sensitive "confidential, commercial, or financial information" that is exempt from disclosure under RSA 91-A:5, IV. *See, e.g., Public Service Co. of N.H.*, DF 98-016, Order No. 22,923 (May 11, 1998) (granting confidential treatment to internal memorandum containing earnings projections). The Company seeks to keep this information confidential on both a public and internal basis, and requests that the Commission similarly grant confidential treatment to it.

j Response to Audit Staff Request # 31

68. Audit Staff Request #31 referenced the Company's earlier response to Audit Staff Request #6 and requested that the Company provide certain internal audit reports with recommendations that were described in that response. The Company provided confidential versions of the requested information on April 30, 2010.

69. The attachments to the Company's response to Audit Staff Request #31 comprise internal audit reports that are highly confidential assessments of National Grid's processes. These reports are comprehensive, detailed, and identify operational strengths and weaknesses in a number of critical areas. As such, the Company has a privacy interest in the confidentiality of these internal audits.

70. The Company would be likely to suffer competitive harm if these internal audit reports are disclosed. Disclosure could provide National Grid's competitors with detailed assessments of its internal processes, including operational strengths and weaknesses and recommendations for improvement. Such information will provide National Grid's competitors with an unfair advantage over National Grid. Moreover, public disclosure of these reports could make it less likely that future internal audits will be fully candid and self-critical. This would harm not only National Grid but the ratepayer, who ultimately benefits from improvements resulting from a fully candid and self-critical audit process.

71. The Commission has granted confidential treatment to such internal audits in the past for reasons similar to those stated above. *Public Service Company of N.H.*, DE 00-009, Order No. 23,516 at 12 (June 23, 2000). Disclosure of this information would not provide the public with information about the conduct or activities of the Commission or other parts of New Hampshire state or local government, and the Commission should grant confidential treatment to the internal audit reports in Audit Staff Request # 31.

k. Attachment FL-S1 to Supplemental Testimony of Frank Lombardo

72. On September 13, 2010, National Grid NH submitted supplemental testimony of Frank Lombardo relating to certain expenses that the Company decided to remove from its proposed revenue requirement. The Company submitted confidential and redacted versions of Attachment FL-S1 to Mr. Lombardo's supplemental testimony.

73. Pages 4 and 5 of Attachment FL-S1 are an itemization of certain expatriate-related expenses in the historical test year ended June 30, 2009, and contain the names of various third party rental agents to whom the Company made payments. These rental agents are not affiliated

with the Company, and as noted in the previous paragraph the Company is no longer seeking recovery for such expenses.

74. The Company is concerned that the rental agents identified in Attachment FL-S1 would be subject to media inquiries and harassment if information regarding payments from the Company is publicly disclosed. In addition, National Grid employees may be subject to harassment at their personal residences, which could become known if the names of their landlords became known. The Company adjusted its proposed revenue requirement to remove these expenses from its proposed cost of service; because the Company is not seeking to recover for these expenses, the information in the attachment is no longer relevant to the rate case. Disclosure of these individuals' names would not shed significant light on the Commission's functions in such a way as to outweigh the privacy interest inherent in that information. There is no countervailing public interest in the disclosure of the rental agents' names that would justify the potential invasion of these individuals' privacy, and the Commission should grant confidential treatment to this information.

WHEREFORE, National Grid NH respectfully requests that the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment;
- B. Such other relief as is just and equitable.

Respectfully submitted,

EnergyNorth Natural Gas, Inc.
d/b/a National Grid NH

By Its Attorneys

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Dated: January 13, 2011

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Certificate of Service

I hereby certify that a copy of this Motion for Protective Order and Confidential Treatment has been electronically served and mailed to the service list in this case.


Patrick H. Taylor