

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

**DOCKET NO. DG 19-126**

**Northern Utilities, Inc.**

**2019-2024 Integrated Resource Plan**

**Motion for Protective Order and Confidential Treatment**

NOW COMES Northern Utilities, Inc. ("Northern" or "the Company") and, pursuant to RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08, respectfully moves the New Hampshire Public Utilities Commission (the "Commission") to issue a protective order according confidential treatment to certain information described below and submitted herewith. Specifically, Northern requests that the Commission issue an order extending the protective treatment previously granted to confidential information in the Company's initial filing to certain confidential and / or proprietary commercial information submitted in the course of discovery in this matter.

In support of this Motion, Northern states as follows:

1. In connection with its initial filing in this case, Northern submitted a Motion for Confidential Treatment seeking protective treatment of confidential, proprietary, and competitively sensitive gas supply pricing information filed in the Company's Least Cost Integrated Resource Plan ("LCIRP") and Appendix 5. Northern's motion further requested that such treatment be extended "to any discovery, testimony, argument or briefing relative to the confidential information." DG 19-126, Motion for Protective Treatment at 4. No party objected to the Company's motion, which the Commission granted at a prehearing conference on September 4, 2019. DG 19-126, Transcript at 5 (Sept. 4, 2019).

2. During the discovery phase of the above-captioned docket, the Company submitted confidential information in connection with the following data request responses: Staff 1-4; OCA 1-2; OCA Tech Session (TS) 2-1; OCA TS 2-5. When submitting these responses, the Company indicated that it a good faith basis for seeking confidential treatment of the confidential materials pursuant to Puc 203.08 and intended to submit a motion for confidential treatment regarding the documents at or before the commencement of the hearing in this docket.

3. The type of confidential information that is included in the above-referenced data requests is already subject to Protective Orders in a concurrently pending Maine Public Utilities docket, 2019-00123. ME PUC 2019-00123, Protective Order 1 (July 19, 2019).

4. The Company specifically requests that confidential treatment be extended to information submitted in connection with the following data requests:

- a. Staff 1-4, which requests “all Tables and Graphs in live electronic format.” Attachments to the Company’s response include excel versions of tables and graphs used by the Company in its LCIRP. Certain of these attachments are confidential: Staff 1-4-A, 1-4-R, 1-4-V, and 1-4-W16 through 1-4-W-25. These “live” versions contain information for which confidential treatment has already been granted, as well as models and formulae that are confidential and proprietary to the Company.
- b. OCA 1-2 requests, among other things, “the annual throughput of ‘delivered supplies’ for the last ten years” in live excel format. Attachment 1 to this response provides the requested information in live excel format. This attachment provides daily dispatch data by resource, and it is confidential in that it includes information about the Company’s confidential and proprietary utilization of resources and supply strategies. Disclosure of information related to the Company’s supply strategies and decision making processes to other parties that transact in the highly constrained market in which Northern operates would place the Company at a commercial disadvantage.
- c. OCA TS 2-1 requested a “non-redacted version of the Report Titled ‘Examination of Natural Gas Supply Resource Procurement and Management by Northern Utilities Inc. d/b/a Unitil’” This report contains confidential, proprietary, and commercially sensitive information related to the Company’s procurement and management of gas supply resources and was prepared and presented by a third-party consultant in Maine Docket 2018-00300 (“Commission Initiated Review Of Gas Supply Procurement And Management Activities Pertaining To Northern

Utilities, Inc. d/b/a Unitil”). It is already subject to a Protective Order in Docket 2018-00300. ME PUC 2018-00300, Protective Order No. 1 (Jan. 23, 2020).

- d. OCA TS 2-5 requests the Company’s “average costs of LNG (only) delivery and delivery of gas to an end-user on the Company’s distribution system for the last five years (winters and summers reported separately) in live EXCEL format.” Attachment 1 to this response provides the requested information in live excel format. This attachment includes confidential volume and unit cost information that is customarily protected in the Company’s cost of gas proceedings.

5. In determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission employs the analysis articulated in *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008) and *Lamy v. N.H Public Utilities Commission*, 152 N.H. 106 (2005). Under this analysis the Commission first determines “whether the information is confidential, commercial or financial information, ‘and whether disclosure would constitute an invasion of privacy.’” *Unitil Energy Systems, Inc.*, DE 10-055, Order No. 25,214 at 35 (April 26, 2011) (citing *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 552 (1997) (emphasis in original); *see also Re Northern Utilities, Inc.* DG 12-031, Order No. 25,330 at 5 (February 6, 2012) (“In determining whether confidential, commercial, or financial information should be deemed confidential, we first consider whether there is privacy interest that would be invaded by the disclosure.”). When a privacy interest is at stake, the public’s interest in disclosure is assessed. *Id.* (citing *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009)). 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.*

6. Applying this three part test, the first inquiry is whether there is a privacy interest in the competitively sensitive commercial information for which the Company seeks protective

treatment. As explained in the Company's initial motion for confidential treatment, the Company has an expectation of privacy in key terms such as pricing and related commercial provisions in supply agreements based on existing Commission practice. For example, in *Liberty Utilities*, Docket DG 14-380, in which the Commission considered a precedent agreement between Liberty Utilities and the Tennessee Gas Pipeline Company, L.L.C., the Commission held that the Company had a reasonable expectation of privacy in similar terms contained in that agreement. See February 19, 2015 Secretarial Letter in DG 14-380. Commission rules also recognize the need to protect gas supply contracts through their explicit acknowledgment that "pricing and delivery-related special terms of supply agreements" provided in cost of gas proceedings are accorded confidential treatment. See Puc 201.06(a)(26)(b). Based on the Commission's established treatment of pricing and delivery-related special terms in similar dockets as well as cost of gas proceedings, the Company has a reasonable expectation of privacy that the same type of information will be accorded confidential treatment here.

7. The next step in the analysis is to consider whether there is a public interest in disclosure of the information, including whether release of the information lends any insight into the workings of government as it relates to this case. Here, public disclosure of the supply pricing and pricing for pipeline expansion capacity that has not yet gone into service would not materially advance the public's understanding of the Commission's analysis in this proceeding. The Company negotiates pricing and delivery-related terms, release of such information does not shed any light on the Commission's work but rather the Company's negotiating power. The public's interest is in understanding the Commission's review of the proposed contract and why the contract is in the public interest. The work undertaken by the Commission to review the IRP is publicly available and as a result, the Commission's work is available for public scrutiny.

Even if one were to conclude that there is a public interest in disclosure of the confidential and competitively sensitive information described herein, the harm that could occur as a result of that disclosure is well outweighed by the privacy interests at stake. It would be highly disadvantageous to the Company's negotiating position if any future suppliers were aware of the pricing or other key terms upon which the Company is prepared to conduct business. Similarly, disclosure would impair the respective bargaining positions of Northern's counterparties, who entered agreements with the Company with an expectation of privacy and confidentiality relative to certain commercial terms. As a result, Northern's ability to negotiate favorable terms with such counterparties, or similarly situated entities, may be harmed. The harm caused by disclosure would ultimately affect the Company's customers, since the cost associated with any capacity arrangement are charged to customers through the Company's cost of gas charge. Thus, the Company submits that there is no public interest in disclosing this information.

8. The attachments to Staff 1-4, OCA 1-2, OCA TS 2-1, and OCA TS 2-5 all contain confidential, proprietary, and commercially sensitive information. The Staff 1-4 attachments simply provide electronic presentations of material already accorded confidential treatment. The attachment to OCA TS 2-1 has already been accorded confidential treatment in Maine Docket 2018-00300, and this Commission should acknowledge and preserve that confidential treatment. Finally, the attachments to OCA 1-2 and OCA TS 2-5 contain information that is competitively sensitive and could place the Company at a commercial disadvantage. As noted above, the confidential information in OCA TS 2-5 Attachment 1 is customarily protected in the Company's cost of gas proceedings.

9. The next step in the analysis is to consider whether there is a public interest in disclosure of the information, including whether release of the information lends any insight into

the workings of government as it relates to this case. Here, public disclosure of the Company's confidential, proprietary, and competitively sensitive information would not materially advance the public's understanding of the Commission's analysis in this proceeding. Similarly, information that is confidential to Northern - the Company's internal decision-making processes regarding contractual commitments, descriptions of the Company's analytical and evaluative processes and supply portfolio, confidential work product inherent in "live" excel files, and commercial information provided to Northern by counterparties with an expectation of privacy – is not probative of the Commission's work but rather the Company's confidential commercial analyses and strategies.

10. The public's interest is in understanding the Commission's review of the proposed contracts and why the contracts are in the public interest. The Company's expectation is that the work that the Commission undertakes to review the transaction at issue in this case will be publicly available and as a result, the Commission's work will be available for public scrutiny. Even if one were to conclude that there is a public interest in disclosure of the Company's internal confidential information and analyses, the harm that could occur as a result of that disclosure is well outweighed by the privacy interests at stake. It would be highly disadvantageous to the Company's negotiating position if any potential counterparties were aware of the pricing and other key terms upon which the Company was willing to conduct business, or of its analytical and evaluative processes. Disclosure would impair the respective bargaining positions of Northern's counterparties, who entered the precedent agreements with an expectation of privacy and confidentiality relative to certain commercial terms. As a result, Northern's ability to negotiate favorable terms with such counterparties, or similarly situated entities, may be harmed. The harm caused by disclosure would ultimately accrue to the

Company's customers, since the cost associated with any capacity arrangement are charged to customers through the Company's cost of gas charge. Thus, the Company submits that there is no public interest in disclosing these key contract terms or the other confidential information described herein.

11. The confidential information described above has been made available to the Commission Staff and the Office of the Consumer Advocate notwithstanding any Commission order granting confidential treatment.

12. Northern requests that the Commission issue an order protecting the above-described information from disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form.

WHEREFORE, Northern respectfully requests that the Commission:

- A. Issue an appropriate order that exempts from public disclosure and otherwise protects the confidentiality of the information designated confidential in the documents referenced above;
- B. Waive the requirement of Puc 205.01 that a motion for confidential treatment be filed at or before the hearing in this matter and accept this motion on a post-hearing basis; and
- C. Grant such additional relief as is just and appropriate.

Dated at Hampton, NH on this 11<sup>th</sup> day of June, 2020.

Respectfully submitted,

NORTHERN UTILITIES, INC.

By Its Attorney,

A handwritten signature in black ink, appearing to read 'Patrick H. Taylor', written over a horizontal line.

Patrick H. Taylor (NH Bar # 17171)

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