

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DG 19-_____

NORTHERN UTILITIES, INC.
PETITION FOR APPROVAL OF
FOURTH AMENDMENT TO SPECIAL CONTRACT
WITH NATIONAL GYPSUM COMPANY

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

NOW COMES Northern Utilities, Inc. (“Northern”), by and through its undersigned attorneys, and, pursuant to RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08(b), respectfully moves the New Hampshire Public Utilities Commission (“the Commission”) to issue a protective order which accords confidential treatment to certain information described below and submitted herewith. In support of this Motion, Northern states as follows:

1. Northern is filing contemporaneously with this Motion, a Petition for Approval of a Fourth Amendment to a special contract with National Gypsum (“the Customer”). The Amendment extends the existing National Gypsum special contract for five (5) years and provides for three (3) one-year term extension periods after the expiration of the above-referenced five-year extension. Certain supporting documents filed with the petition contain confidential information. Those documents include: the prefiled testimony of Michael Smith (Exhibit NUI-MS-1); a letter from the Customer describing the special circumstances that support extending the special contract (Schedule NUI-MS-6); the original special contract (Schedule NUI-MS-1); and Northern’s marginal cost of service analysis for the customer

(Schedule NUI-MS-7). Pursuant to N.H. Admin. Rule Puc 203.08 (b) and (f) and Puc 201.04 (c), Northern has submitted confidential/unredacted copies of the above-referenced documents for which confidential treatment is sought and has highlighted the portions of the confidential/unredacted copies that have been redacted in the publicly-filed versions of the documents.

2. All of the above-referenced documents contain competitively sensitive commercial information which Northern does not disclose to anyone outside of its corporate organization or its authorized representatives. As such, the information is entitled to be protected from public disclosure under RSA 91-A:5, IV. *See also* RSA 350-B (“Uniform Trade Secrets Act”).

3. Northern seeks to exempt the above-referenced documents (or portions of them as applicable) from disclosure on the public record of this docket in order to protect Northern’s competitive position and to protect the Customer’s competitive position. Release of the above-described confidential information would likely result in harm to Northern in the form of being disadvantaged in its bargaining position with other customers seeking special contracts who have alternative service options, whether through bypass or from alternative energy sources. Public disclosure of the confidential information would also impair Northern’s future bargaining position and thus its ability to obtain the maximum possible contribution to fixed costs. Additionally, disclosure of the information would provide Northern’s competitors all of the information they would need to undercut Northern in its customer-specific proposals.

4. 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 (April 26, 2011), p. 35. If a privacy interest is implicated, the Commission then balances the asserted private confidential, commercial or financial interest against the public’s interest in disclosure in order to determine if disclosure would inform the public of the government’s conduct. *Id.* If it does not, then “disclosure is not warranted.” *Id.*

5. For the reasons presented above, all of the information is clearly confidential, commercial or financial, and disclosure of it would pose harm and constitute an invasion of privacy. Because such disclosure will not inform the public of the government’s conduct, the information should be protected.

6. The Commission has previously issued protective orders for the same or very similar confidential information submitted with the original special contract between Northern and National Gypsum in Docket DG 99-123, the Second Amendment of Agreement and the Third Amendment of Agreement. *See Re Northern Utilities, Inc.*, DG 99-123, Order No. 23,313, 84 NH PUC 529 (Oct. 5, 1999) (“Withholding the price information, and the data used to inform the calculation and negotiation of those prices, is appropriate given the existence of other potential suppliers of fuel to industrial customers in coastal areas in close proximity to the new pipeline, and the potential damage to Northern’s ability to negotiate with other customers who might seek to balance Northern against other suppliers.” 84 NH PUC at 529); *Re Northern Utilities, Inc.*, DG 09-201, Order No. 25, 047 (Nov. 25, 2009) (“Disclosing the information would likely lead to the erosion of Northern’s ability to maintain a strong position in negotiating contracts. It would also allow competitive energy suppliers to understand Northern’s costs and possibly undercut them.” 94 NH PUC at 683); and *Northern Utilities, Inc.*, DG 11-231, Order No. 25,306 (Dec. 22,

2011) (“Disclosure would reveal internal business decisions and financial information, could harm Northern, and could result in a competitive disadvantage to Northern, ultimately to detriment of ratepayers. Further, there is no indication that disclosure would inform the public about the workings of the Commission. In balancing the interests of Northern in protecting information with the public’s interest in disclosure, we find that the privacy interests in non-disclosure outweigh the public interests in disclosure and, therefore, we grant Northern’s motion.” Order 25,306 at 6).

7. Northern requests that the Commission issue an order protecting the above-described information from public disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form. Northern requests that the protective order also extend to any discovery, testimony, argument or briefing relative to the confidential information.

WHEREFORE, Northern respectfully requests that this honorable Commission:

A. Issue an appropriate order that exempts from public disclosure and otherwise protects the confidentiality of the information designated confidential contained in the documents submitted herewith;

B. Grant such additional relief as it deems appropriate.

Respectfully submitted,
NORTHERN UTILITIES, INC.



Gary Epler
Chief Regulatory Counsel
Unitil Service Corp.
Attorney for Northern Utilities, Inc.

Certificate of Service

I hereby certify that on this 13th day of September, 2019, a copy of the foregoing Motion was served electronically upon the Office of Consumer Advocate.

A handwritten signature in black ink, appearing to read "Gary Epler". The signature is written in a cursive style with a large initial "G" and "E".

Gary Epler