

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

**DE 21-104**

**NORTHERN UTILITIES, INC.**

**MOTION FOR PROTECTIVE ORDER  
AND CONFIDENTIAL TREATMENT**

NOW COMES Northern Utilities, Inc. (“Northern” or the “Company”) and, pursuant to NH RSA 91-A:5, IV and N.H. Code of Administrative Rules (“N.H. Admin. Rules”) Puc 203.08, respectfully moves the New Hampshire Public Utilities Commission (“Commission”) to issue a protective order which accords confidential treatment to the following information contained in documents filed with the Company’s Petition for Rate Adjustments: (a) sensitive financial and pricing information related to a customer special contract contained in Northern’s revenue requirement Workpapers 1.1 and 1.2; (b) a variance analysis containing the results of a discounted cash flow (DCF) analysis as calculated by Northern’s proprietary financial model, provided in Schedule CGDN-6 to the prefiled testimony of Christopher Goulding and Daniel Nawazelski; (c) sensitive commercial information contained in a Maine report on Northern’s gas supply resource procurement and management, provided in the Volume of Supplemental Filing Requirements pursuant to N.H. Code of Administrative Rules Puc 1604.01(a)(13); and (d) certain Company Officers’ Compensation contained in the Volume of Supplemental Filing Requirements pursuant to N.H. Code of Administrative Rules Puc 1604.01(a)(14). Northern has filed this information with the Commission and submitted it to the Office of Consumer Advocate with the

understanding it will be maintained as confidential until the Commission rules on the within Motion.

In support of this Motion, Northern states as follows:

**I. Standard of Review**

1. In determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission applies a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Northern Utilities, Inc.*, DG 17-070, Order No. 26,129 at 15 (May 2, 2018) (*citing Liberty Utilities (EnergyNorth) Natural Gas Corp.*, Order No. 26,109 at 23 (March 5, 2018)). First, the Commission inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *Id.* Then the Commission balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, 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.*

**II. Special Contract Revenue Adjustment (CGDN Workpapers 1.1 and 1.2)**

1. As explained in the testimony of Christopher Goulding and Daniel Nawazelski, and set forth in the Company's Schedule RevReq-3-2, the Company made an adjustment to total revenues to reflect certain known and measurable special contract rate increases. Northern's workpapers supporting this Schedule, Workpapers 1.1 and 1.2, are provided with the Company's revenue requirement schedules and contain sensitive and confidential commercial and financial information including pricing and cost information from the Company's special contracts as well as customer usage data. Specifically, Workpapers 1.1

and 1.2 contain confidential special contract rates, including customer charges and monthly fixed charges, customer usage by term, and special contract revenues.

2. Northern seeks to protect this information from public disclosure in order to protect Northern's competitive position as well as that of the Customer. Release of the above-described confidential information would likely result in harm to the Customer in that it would divulge sensitive and confidential commercial and financial information that the Customer would not otherwise disclose. This information would be of interest to competitor entities and may be utilized to gain a superior competitive position over the Customer. Furthermore, Northern seeks to protect this information from public disclosure in order to protect Northern's competitive position. Release of the above-described confidential information would likely result in harm to Northern in the form of being disadvantaged in price negotiations with customers or potential customers who have alternative options, whether from bypass, alternative fuel supplies, or from direct competitors. Public knowledge of the confidential information would impair Northern's future bargaining positions and thus its ability to obtain the maximum possible contribution to fixed costs. Northern must be able to maximize such contributions to fixed costs as this benefits its firm ratepayers.

3. The Commission has previously evaluated and granted confidential treatment to the information that is similar or identical to the information contained in Workpapers 1.1 and 1.2. See DG 17-070, Order No. 26,129 at 16. The Company urges the Commission to reach the same conclusion in this case.

### **III. The Epping Discounted Cash Flow Analysis (Schedule CGDN-6)**

4. In its Order granting the Company's request for a franchise to operate in Epping, New Hampshire, the Commission directed Northern to provide, in the Company's next rate

case, a variance analysis comparing the original DCF analysis for the Epping franchise (DG 18-094 Hearing Exhibit 8) and a revised DCF analysis using actual costs and revenues and projected future revenues. DG 18-094, Order No. 26,220 at 12 (Feb. 8, 2019). Northern has provided the requested analysis as Schedule CGDN-6.

5. Schedule CGDN-6 contains the original results of the Company's DCF analysis, as well as updated results consistent with the Commission's direction. The DCF analyses are conducted using the Company's proprietary financial model. Northern safeguards this information and does not disclose it to anyone outside of its corporate organization and its authorized representatives. Release of the confidential information contained in Schedule CGDN-6 would likely result in commercial harm to Northern and its customers as the Company's competitors could use the information to Northern's disadvantage. Northern competes against providers of alternative energy suppliers, including fuel oil and propane, as well as other suppliers of natural gas delivered by traditional and non-traditional methods, and disclosure of the Company's confidential analytical information as it relates to the Epping expansion project would impair the Company's competitive position.

6. Northern previously sought, and received, confidential treatment for the results of the DCF analysis as conducted in connection with the Company's Epping expansion efforts. DG 18-094, Order No. 26,220 at 11 (Feb. 8, 2019). The updated DCF analysis is similarly sensitive, and the Commission should extend the same confidential treatment granted in DG 18-094 to the information in Schedule CGDN-6.

#### **IV. Maine Gas Supply Procurement and Management Report**

1. Rule Puc 1604.01(a) requires that a public utility filing a rate case provide “the utility’s most recent management and financial audits if not previously filed in an adjudicative proceeding.”

2. On October 17, 2018, the Maine Public Utilities Commission issued an Order in Maine PUC Docket 2015-00155 indicating an intent to “initiate periodic audits” of all Maine Local Distribution Companies (“LDCs”) “to allow for a comprehensive, structured and in-depth examination of LDC gas supply procurement and management decisions and activities.” The Commission first conducted an audit of Northern Utilities, Inc.’s Maine Division (“Northern Utilities Maine”). 2018-00300, *Northern Utilities Inc. Review of Gas Supply Procurement and Management Activities*, Notice of Summary Investigation (October 18, 2018). The Maine Commission’s third-party consultant, Liberty Consulting Group, issued Confidential and Redacted versions of its Final Report on December 19, 2019. Though the investigation was not a “Management Audit” as that term is defined in 35-A M.R.S. § 113, the Company has provided a copy of the Final Report as an attachment to its response to Puc 1604.01(a)(13).

3. At the outset of the above-referenced Maine docket, the Company sought a protective order applying, *inter alia*, to any confidential, proprietary, and competitively sensitive information regarding the Company’s gas supply procurement and management processes contained in the Final Report issued by the Maine Commission’s third party consultant. The Commission granted the Company’s request and issued a protective order. When the Commission’s third party consultant issued its Final Report, the Maine Commission provided it on both a redacted and confidential basis. The redacted version of the Final Report protects the Company’s confidential, proprietary, and competitively sensitive information regarding

the Company's gas supply procurement and management processes from public disclosure, but the majority of the document is public.

4. The New Hampshire Commission should grant the same protections that the Maine Commission has granted to this information. Disclosure of such information may be prejudicial to Northern, its counterparties, and its customers. For example, if confidential, proprietary, and commercially sensitive terms of gas supply agreements are disclosed, potential counterparties in future gas resource contracts would be given an unfair advantage with respect to their respective negotiating positions. This could, in turn, result in future transactions that are less favorable to Northern's New Hampshire ratepayers.

5. Moreover, like other parties, Northern and its contractual counterparties enter into these agreements with an understanding that commercial terms will remain confidential. In fact, many of Northern's agreements with counterparties prohibit disclosure of confidential information without prior written counterparty consent or in the absence of an order mandating disclosure. Such confidential terms and information may include, but are not limited to, the prices paid by Northern pursuant to RFPs, price terms, operational provisions, credit terms, other cost information, including commodity, city-gate, and delivered prices, as well as other commercial terms and sensitive material. Disclosure of the terms and substance of such agreements to the marketplace would undercut the reasonable expectations of Northern and its counterparties with respect to sensitive agreements and documents and potentially put Northern in breach of its contractual obligations.

6. The New Hampshire Commission has consistently protected information of this kind from public disclosure. Furthermore, a neighboring Commission has already granted confidential treatment of the information, and posted the confidential and redacted versions

of the report on its web site. The information is confidential, commercial or financial information within the meaning of RSA 91-A:5, IV, and should be granted confidential treatment in this case.

## **V. Company Officers' Compensation**

2. In accordance with Puc 1604.01(a)(14), Northern has submitted documents containing officer compensation and benefit information. The compensation of Northern's officers (the Company's President and Senior Vice Presidents) who are or were also officers of Northern's parent, Unitil Corporation, is public information which is annually disclosed in the Unitil Corporation's Proxy Statement filed with the federal Securities and Exchange Commission. The Company does not seek to protect this information from disclosure. The compensation of the remaining officers (the Company's Controller, Treasurer, three Vice-Presidents and Secretary), however, who are not officers of the parent, has not been previously disclosed or made publicly available. Public disclosure of the compensation and benefit information for these employees could harm Northern's ability to negotiate the terms of employment for its current and future employees. Moreover, allowing the Company's competitors access to such information could allow competitors an unfair advantage in competing to retain similar management and executive employees.

3. The above-described information meets the Commission's three-part test. The compensation information is clearly confidential, commercial or financial, and disclosure of it would pose harm and constitute an invasion of privacy. The Commission protected substantively similar information provided in accordance with Puc 1604.01(a)(14) in Northern's most recent rate case, DG 17-070. In that case, the Commission "protect[ed] the information regarding the compensation of Northern's officers, who are not officers of Unitil,

from public disclosure, because disclosure could harm Northern’s ability to attract qualified personnel.” *Northern Utilities, Inc.*, DG 17-070, Order No. 26,129 at 15-16 (May 2, 2018). The Commission also noted that the information was not previously disclosed or publicly available. Though the Commission noted that the public has “some” interest in disclosure of this information, it found that the privacy interests in non-disclosure outweighed the public’s interest in disclosure. *Id.* at 16. The Commission should reach the same conclusion in this case.

## **VI. Conclusion**

4. Northern is providing the confidential information described herein directly to the Office of Consumer Advocate (“OCA”), as required by RSA 363:28,VI. Provision of these materials to the OCA offers assurance to the public that this information will be subject to investigation, discovery and analysis by that office, as well as by the Department of Energy, and that the results of such review will be provided to the Commission for its consideration.

5. 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 the Commission:

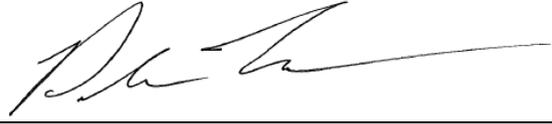
A. Issue an appropriate order that exempts from public disclosure and otherwise protects as requested above the confidentiality of the above-described information designated confidential submitted herewith; and

B. Grant such further relief as may be just and appropriate.

Respectfully submitted

NORTHERN UTILITIES, INC.

By its Attorney:



Dated: August 2, 2021

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Certificate of Service

I hereby certify that on August 2<sup>nd</sup>, 2021, a copy of the foregoing Motion was electronically served upon the Office of Consumer Advocate.



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Patrick H. Taylor

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