

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

DOCKET NO. DG 23-___

**Petition of Northern Utilities, Inc. for Approval of
Empress Capacity Agreements**

**Motion for Protective Order and
Confidential Treatment Regarding Precedent Agreements**

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 requiring that certain limited terms of the agreements under review (and as more fully described in the Company's supporting testimony) and the Company's assessment supporting these agreements filed herewith be treated as confidential commercial information. In support of this Petition, Northern states as follows:

1. Northern is filing contemporaneously with this Motion, a Petition for Approval of Empress Capacity Agreements. Certain supporting documents filed with the petition contain confidential commercial information, including: (i) portions of the Company's Empress Capacity Resource Assessment (Exhibit Unutil-FXW-2); (ii) the Company's precedent agreement with TransCanada Pipeline Limited ("TCPL") for service commencing in 2027 (Exhibit Unutil-FXW-2 Attachment 6) ("2027 TCPL PA"); (iii) an estimate of potential pre-service and cancellation costs (Exhibit Unutil-FXW-2 Attachment 7); and (iv) the Company's Modelled Cost Analysis (Exhibit Unutil-FXW-2 Attachment 9).

2. The Company is requesting protective treatment of commercial terms of the 2027 TCPL PA which appear in both the agreement itself and which are described and reflected in Exhibit Unutil-FXW-2 and the cancellation cost estimate in Exhibit Unutil-FXW-2 Attachment 7. These include an estimated liability limit in the event that the 2027 TCPL PA is cancelled. If released, this information could impair the Company's ability to competitively negotiate other capacity arrangements in the future which would disadvantage the Company's customers.

3. Furthermore, certain aspects of Northern's Empress Capacity Resource Assessment (Exhibit Unutil-FXW-2), including but not limited to descriptions of Northern's analytical and evaluative processes and supply portfolio, (a) incorporate the above-described confidential and proprietary information and (b) constitute confidential and proprietary information in and of themselves. Specifically, portions of Exhibit Unutil-FXW-2 reflect the Company's confidential, competitively sensitive, and proprietary analytical and evaluative processes. Similarly, Exhibit Unutil-FXW-2 Attachment 9 comprises a confidential and proprietary assessment that also includes pricing information. Northern also anticipates that the Company may be asked to disclose other confidential and proprietary business information in the course of this proceeding, including but not limited to financial data, forecasts, budgets, internal presentations, and cost of gas information. Disclosure of such information may be prejudicial to Northern, its counterparties, and its customers for the reasons set forth above. For example, disclosure of Northern's confidential business information will place it at a competitive disadvantage relative to potential future counterparties as well as potential competitors.

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 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.*

5. Applying this three part test, the first inquiry is whether there is a privacy interest in the commercial terms of the 2027 TCPL PA and the confidential and proprietary components of the Empress Capacity Resource Assessment and the attachments described above for which the Company seeks protective 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 commercial 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.

6. 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 commercial terms of the 2027 TCPL PA and the Company’s confidential and proprietary assessment would not materially advance the public’s understanding of the Commission’s analysis in this proceeding. 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 Company’s expectation is that the work that the Commission undertakes to review this transaction 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 commercial terms of the 2027 TCPL PA and the Company’s associated evaluation, 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 key commercial terms upon which the Company was willing to conduct business. Similarly, 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.

7. The confidential information described above will be made available to the Department of Energy and the Office of the Consumer Advocate notwithstanding any Commission order granting confidential treatment. Moreover, the Company has only redacted so much information as is necessary to protect its privacy interests.

8. 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. 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 the confidentiality of the information designated confidential in the documents submitted herewith; and
- B. Grant such additional relief as is just and appropriate.

Dated at Hampton, NH on this 5th day of October, 2023.

Respectfully submitted,

NORTHERN UTILITIES, INC.

By Its Attorney,



Patrick H. Taylor (NH Bar # 17171)
Chief Regulatory Counsel
Unitil Service Corp
6 Liberty Lane
Hampton, NH 03842-1720
Telephone: (603) 773-6544
Email: taylorp@unitil.com