

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

DOCKET NO. DG 23-087

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

**Motion for Protective Order and
Confidential Treatment Regarding Settlement Agreement**

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 proprietary and competitively sensitive commercial information set forth in the Settlement Agreement and Attachment A thereto be treated as confidential commercial information. In support of this Motion, Northern states as follows:

1. Northern is filing contemporaneously with this Motion, a Settlement Agreement among Northern and the New Hampshire Department of Energy (the "Department") (collectively, the "Settling Parties").

2. In connection with its initial filing in this case, Northern submitted a Motion for Confidential Treatment seeking protective treatment of certain commercial terms of the agreements at issue in this case, as well as descriptions of and discussion of such terms in the prepared testimony of the Company's witness. Northern's motion further requested that such treatment be extended "to any discovery, testimony, argument or briefing relative to the

confidential information.” No party objected to the Company’s motion.

3. The Company is requesting protective treatment of limited proprietary and competitively sensitive commercial information which appears in the Settlement Agreement. This information comprises competitively sensitive commercial information regarding TransCanada Pipeline Limited’s open season for capacity (the “TCPL Commercial Information”). Disclosure of such information may be prejudicial to Northern, its counterparties, and its customers; 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. Disclosure of this confidential business information will place Northern and its counterparties 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 TCPL Commercial Information. As Northern noted in its initial motion for protective treatment in this matter, the Company and its counterparties have 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 commercial information in similar dockets as well as cost of gas proceedings, the Company and its counterparties have 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 TCPL Commercial Information 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 TCPL Commercial Information, the harm that could occur as a result of that disclosure is well outweighed by the privacy interests at stake. Disclosure would impair the respective bargaining positions of Northern's counterparties, who have an expectation of privacy and confidentiality relative to certain commercial information shared with the Company. 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 the limited commercial information contained in the Settlement Agreement.

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 testimony or argument 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 TCPL Confidential Information as designated in the documents submitted herewith; and
- B. Grant such additional relief as is just and appropriate.

Dated at Hampton, NH on this 16th day of January, 2024.

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