

DG 02-042

NORTHERN UTILITIES, INC.

2002 Summer Cost of Gas Proceeding

Order Granting Motion for  
Protective Order and Confidential Treatment

O R D E R    N O.    23,964

May 3, 2002

**I.    PROCEDURAL HISTORY**

On March 15, 2002, Northern Utilities, Inc. (Company), a public utility engaged in the business of providing retail natural gas service to residents of the State of New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) its summer cost of gas filing for the period May 1, 2002 through October 31, 2002.

On March 19, 2002, the Commission issued an Order of Notice setting a hearing for this docket. A hearing in this docket was held at the Commission on April 18, 2002. During the course of the hearing, the Company indicated that it would be filing a motion for protective treatment of certain documents supplied to Commission Staff in support of its filing.

On April 23, 2002, the Company filed with the Commission a Motion for Protective Order and Confidential Treatment pursuant to RSA 91-A:5,IV, Admin. Rules Puc

204.05(b) and 204.06. The motion requests confidential treatment of "copies of all invoices associated with Northern's May and October 2001 gas cost reconciliations" previously provided to Audit Staff.

In its motion, the Company states that (1) the documents contain supplier identity and pricing information that the Company seeks to protect from public disclosure; (2) release of the information is likely to result in a competitive disadvantage to the Company; (3) release of supplier invoices could cause harm to suppliers, who could be placed at a competitive disadvantage in negotiating contracts in the competitive marketplace; and (4) the information is not public knowledge, is generally protected by Northern, and has not been published elsewhere.

The Commission notes that Northern contacted the OCA and Staff with respect to this motion. The OCA took no position and Staff concurred with the motion.

## **II. COMMISSION ANALYSIS**

N.H. Admin. Rule Puc 204.06 provides that "the Commission shall grant confidentiality upon its finding that the documents sought to be made confidential are within the exemptions permitted by RSA 91-A:5, IV, or other provisions of law based on the information submitted. . . ." RSA 91-A:5, IV

provides an exception to the general rule of public disclosure for "confidential, commercial or financial information." Interpreting this provision, the New Hampshire Supreme Court has instructed agencies of state government to interpret this exemption narrowly, applying a balancing test in order to determine whether "the asserted private, confidential, commercial or financial interest" is outweighed by "the public's interest in disclosure." *Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540, 552-53 (1997).

In applying this balancing test, the Commission must determine whether confidential treatment is appropriate for invoices associated with the Company's summer 2001 gas cost reconciliations, including supplier identity and pricing terms. In *Re EnergyNorth Natural Gas, Inc. d/b/a Keyspan Energy Delivery New England*, DG 02-045, Order No. 23,950 (April 12, 2002), the Commission found that information identifying gas suppliers, as well as terms of gas supply agreements negotiated by a jurisdictional gas distribution company, is sensitive commercial information and warrants confidential treatment. Additionally, in *Re Granite State Electric Company*, 84 NH PUC 310, 311 (1999), the Commission found that similar information contained in an unredacted copy of a transition service supply contract between the parties

contained "commercially sensitive terms and proprietary, and ... the information, if made public, would create a competitive disadvantage that outweighs the benefit to the public disclosure."

Based on Northern's representations and the Commission's previous treatment of similar information, we find that the benefits to the Company of non-disclosure in this case outweigh the benefits to the public of disclosure. We find that the information is exempt from public disclosure pursuant to RSA 91-A:5,IV and Puc 204.06.

**Based upon the foregoing, it is hereby**

**ORDERED,** that the Motion for Protective Order and Confidential Treatment with respect to invoices associated with the Company's Summer 2001 gas cost reconciliations provided to Staff is APPROVED; and it is

**FURTHER ORDERED,** that the protection afforded by this order extends to any additional discovery, testimony, argument or briefing relative to the confidential information; and it is

**FURTHER ORDERED,** that in future filings, Northern shall continue to submit, concurrent with its request for confidential treatment, both redacted and unredacted filings which the Commission shall protect from disclosure during the

pendency of its review of the request for confidentiality, pursuant to N.H. Admin. Rules Puc 204.06; and it is

**FURTHER ORDERED,** that the determination as to protective treatment made herein is subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this third day of May, 2002.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary