

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

EnergyNorth Natural Gas, Inc. d/b/a National Grid NH

Docket No. DG 12-128

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

EnergyNorth Natural Gas, Inc. d/b/a National Grid NH (“EnergyNorth” or the “Company”), in accordance with Puc 203.08, hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment to certain information provided in its response to data request Staff 1-1 in the above-referenced matter. In support of its motion, EnergyNorth states as follows:

1. Data request Staff 1-1 refers to the pre-filed testimony of Thomas Finneral and Mindy Rosen, pages 9 – 10, and requests that EnergyNorth provide a comparison of FY 2012 contractor labor cost per linear foot with expected FY 2013 contractor labor cost per linear foot based on differences between the Company’s prior and current mains and services contracts, respectively.

2. Attachments Staff 1-1(a) and (b) to the Company’s response include sensitive and confidential pricing information negotiated between EnergyNorth and its contractors for mains and services work. Specifically, Attachments Staff 1-1(a) and (b) show individual unit costs for work performed on FY 2012 projects and anticipated work on FY 2013 projects.

3. As explained in the prefiled testimony of Mr. Finneral and Ms. Rosen, EnergyNorth conducted an RFP process for a three-year mains and services contract with twelve (12) qualified construction contractors. Each contractor submitted a confidential bid for the

work, and EnergyNorth ultimately selected the most competitive bidder. The costs per unit reflected in Attachment Staff 1-1 represent the outcome of that competitive process.

4. Puc 203.08 provides in pertinent part that “[t]he Commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law based upon the information submitted pursuant to [Puc 203.08(b)].” Puc 203.08(a).

5. Documents exempt from disclosure as public records under RSA chapter 91-A include “records pertaining to . . . confidential, commercial, or financial information,” as well as “other files whose disclosure would constitute an invasion of privacy.” RSA 91-A:5, IV. To determine whether certain information falls under this exemption and qualifies for protective treatment, the Commission must conduct an analysis of whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25, 208 at 8 (March 23, 2011). In determining whether disclosure will constitute an invasion of privacy, the Commission applies a three-step analysis. *See Public Service of New Hampshire*, Order No. 25,174 (November 24, 2010) (citing *Lamy v. N.H. Pub. Utils. Comm’n*, 152 N.H. 106 (2005)). First, the Commission evaluates whether there is a privacy interest at stake that would be invaded by the disclosure; second, if a privacy interest is at stake, the Commission assesses the public’s interest in disclosure; and third, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.* at 12.

6. Disclosure of the FY 2012 and FY 2013 unit costs as set forth in Attachments Staff 1-1(a) and (b) will cause EnergyNorth and its mains and services contractors competitive

harm. Specifically, disclosure of this information will put the Company's contractors at a competitive disadvantage by divulging to competitors the unit costs charged to EnergyNorth.¹ The contractors' competitors could use such information to their strategic advantage when competing for work in the future. Furthermore, disclosure of the contractors' pricing information will erode their ability to maintain a strong negotiating position when bidding for work in the future.

7. Public disclosure may also cause vendors to refrain for competing for work with the Company or other petitioners appearing before the Commission out of concern that confidential and competitively sensitive pricing information would be disclosed. Ultimately, this would harm ratepayers who would bear the burden of lost savings that would otherwise result from a competitive bidding process.

8. To the extent that there is public interest in access to the costs charged by the contractor to EnergyNorth for mains and services work, it is satisfied by the disclosure of the total FY 2012 costs for each individual unit, as well as the estimated total FY 2013 costs for each individual unit. Only the specific unit costs, and the columns disclosing the related quantity for each unit, have been redacted.

9. The Commission has granted confidential treatment to similar pricing information in the past, finding that it is confidential commercial or financial information and that the Company and its service providers have a privacy interest in such information. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25, 208 at 10-11 (March 23, 2011).

¹ EnergyNorth is also requesting that the column representing the quantity of each particular unit be granted confidential treatment in this instance, as the information in that column can be used in connection with the total cost columns, for which the Company does not seek confidential treatment, to determine individual unit pricing.

WHEREFORE, EnergyNorth respectfully requests that the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment;
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

EnergyNorth Natural Gas, Inc.
d/b/a National Grid NH

By their Attorneys

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Certificate of Service

I hereby certify that a copy of this Motion for Protective Order and Confidential Treatment has been electronically served and mailed to the service list in this case.



Patrick H. Taylor