

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF NEW HAMPSHIRE**

In the Matter of the Application of Nordic )  
Energy Services, LLC for a Competitive Electric ) Case No.  
Power Supplier License )

**MOTION OF NORDIC ENERGY SERVICES, LLC FOR CONFIDENTIAL  
TREATMENT OF CERTAIN INFORMATION PROVIDED IN ITS APPLICATION  
FOR A COMPETITIVE ELECTRIC POWER SUPPLIER LICENSE**

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Now comes Nordic Energy Services, LLC (“Nordic”), by its attorneys, Preti Flaherty Beliveau & Pachios LLP, through counsel, pursuant to NH PUC Rules 201.04, 203.08, and RSA 91-A:5, and moves for a protective order keeping the designated information provided in its application confidential and not part of the public record. Seven copies of a redacted and confidential version of the application are submitted herewith.

Specifically, Nordic hereby requests that protection from public disclosure be granted for the following information: the listing disclosing the number and types of customer complaints for each state (Attachment D to the application), and copies of contracts (Attachment E to the application).

**Applicable Law**

PUC Rule 201.04 provides that documents submitted to the Commission are part of the public record with certain exceptions, including documents subject to protective order of the Commission pursuant to PUC 203.08 and documents entitled to confidential treatment pursuant to New Hampshire’s Right to Know Law (RSA 91-A) or other applicable law. The Right to Know Law protects confidential, commercial, or financial information from disclosure. RSA 91-A:5.

New Hampshire law defines a trade secret as “information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” RSA 350-B:1.

The New Hampshire Supreme Court determined that the laws requiring disclosure of public records are “simply an improper means to acquire knowledge of a trade secret.” Caremark PCS Health, LLC v. New Hampshire Department of Administrative Services, Case No. 2014-120 (April 30, 2015) (determining that release of certain information by the Department was a misappropriation of plaintiff’s trade secrets).

The New Hampshire Supreme Court has also acknowledge that “confidential information” encompasses such things as sales statistics, research data, designs, business costs, and financial information. In addition, information is commercial if it relates to commerce. To determine if information is exempt from disclosure as confidential, “the benefits of disclosure must be weighed against the benefits of non-disclosure to the government.” To show that confidential information should not be disclosed, the party seeking protection must demonstrate that “disclosure is likely (1) to impair the State’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” Union Leader Corporation v. New Hampshire Housing Finance Authority, 705 A.2d 725, 142 N.H. 540 (NH 1997); Hampton Police Association, Inc. v. Town of Hampton, 20 A.2d 994, 162 N.H. 7 (N.H. 2011).

## **Customer Complaints**

The information provided in Attachment D describes information that should not be made public by the New Hampshire PUC. The information concerning the number of customer complaints is confidential, competitively sensitive, and otherwise proprietary information.

This is not information that Nordic readily shares with the general public or its competitors. Nordic has only been required to provide similar information as part of its application in Maine. This information is competitively sensitive, and thus, by definition “confidential information”. This information provided in Attachment D should not be made public and should not be placed into the hands of Nordic’s competitors, who may use it improperly, thereby resulting in unfair competition. Such unfair competition will cause substantial harm to Nordic’s competitive position in the marketplace.

Moreover, the information provided in Attachment D does not provide each and every evidentiary detail of the complaints, any investigation, all facts, or the positions taken by all parties involved. It does not tell the entire story, and does not indicate whether the complaint was resolved in Nordic’s favor or the customer’s, was resolved at all, how it was resolved, whether the customer was satisfied with the resolution, or whether the complaint was the result of an error. Thus, the information in Attachment D, when placed in the hands of Nordic’s competitors, provides them an unfair advantage and opportunity to improperly use this data against Nordic, potentially causing Nordic economic and competitive harm. For example, Nordic’s competitors could use the information unfairly to develop misleading comparative advertising, highlighting the competitor’s customer satisfaction while falsely claiming Nordic customer service is lacking. Competition is good; unfair competition is not good. Utilizing

confidential data to a competitor's detriment is not fair. When there is less competition, the few remaining competitors have a greater ability to raise prices.

### **Contracts**

The remaining information for which protection is sought outlines Nordic's contractual relations with customers. Nordic's customer contracts are competitively sensitive, proprietary, confidential, and/or trade secret information. Specifically, the customer contracts qualify as trade secrets as defined by the New Hampshire statute.

The contracts reveal Nordic's "method, technique, or process" from which Nordic derives "independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use" and the contracts are subject to reasonable efforts by Nordic to protect them from public disclosure. RSA 350-B:1.

These contracts define the pricing structure developed by Nordic. Nordic does not share its contracts with the general public or competitors, but shares them only with those customers entering into them. The only federal, state, or local agency that will have access to Nordic's New Hampshire contracts is the New Hampshire Department of Public Utilities. Nordic has labelled its form contracts as confidential, and the contract itself prohibits the customer from disclosing the contract terms to any third-party other than its advisers (attorneys, accountants and lenders) unless necessary to comply with the law or to perform its obligations under the contract. Nordic has gone to great expense and effort in developing its contracts, and competitors should not be able to duplicate Nordic's efforts effortlessly.

Nordic's contracts are also confidential because they are competitively sensitive. The contracts specify terms and conditions which, in the hands of competitors, could be used by Nordic's competitors to copy Nordic's products, provisions or pricing that have proved successful, and could be used against Nordic unfairly as an attempt to demonstrate why customers should choose the competitor over Nordic. Again, Nordic has gone to great effort and expense in creating its contracts and competitors should not be allowed to duplicate Nordic's efforts, effortlessly. The only federal, state, or local agency that will have access to Nordic's New Hampshire contracts is the New Hampshire Department of Public Utilities. Nordic does not share them with the general public or competitors (only with customers and parties having a contractual relationship with Nordic to provide marketing services).

Public disclosure of Nordic's contracts would impair Nordic's ability to respond to competitive opportunities in the marketplace and would provide competitors with an unfair competitive advantage over Nordic. The disclosure of this information to competitors or potential competitors would cause competitive harm to Nordic, and could be used by competitors to Nordic's competitive disadvantage. The electric service industry is highly competitive, and contracts are not information Nordic would willingly share with its competitors. Once Nordic's competitors have access to Nordic's contracts, those competitors would be able to adjust their marketing strategies to respond to competition from Nordic. For example, Nordic's competitors could use the information to develop misleading comparative advertising to diminishing Nordic's abilities to service customers, or they could copy Nordic's products and pricing in areas where that product or pricing is successful. Competition is good; unfair competition is not good. Utilizing such information to a competitor's detriment is not fair. When there is less competition, the few remaining competitors have a greater ability to raise prices. Disclosure of

Nordic's contracts to competitors will not only be detrimental to Nordic and its competitive well-being, but ultimately to customers, as well, when a lack of competition results in price increases. In addition, Nordic should not bear the burden and cost to provide such materials for use by competitors.

### **Conclusion**

As set forth herein, the information that is the subject of this motion should be protected from public disclosure. The non-disclosure of the information will not impair the Commission and its staff (who will have full access to the information) from fulfilling their duties in regulating suppliers, and specifically, Nordic. The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested confidential treatment. The information outlined in this motion is precisely the type of information which companies go to great length to keep private. Knowledge by a competitor would do great harm to Nordic in the marketplace.

For the foregoing reasons, Nordic requests that the designated information be protected from public disclosure and kept under seal.

Respectfully submitted,

**NORDIC ENERGY SERVICES, LLC**

Dated: 12/09/15

*/Peter W. Brown/*

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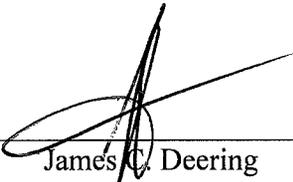
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CERTIFICATION

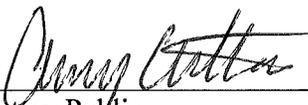
STATE OF ILLINOIS            )  
  )  
COUNTY OF DUPAGE         )

ss:

James C. Deering, being first duly sworn, deposes and says that he is the Managing Member of Nordic Energy Services, LLC; that he has read the foregoing Motion of Nordic Energy Services, LLC for Confidential Treatment, , and that to the best of the moving party's knowledge, information and belief, the statements contained therein are true, correct, and complete, and the information for which protection is sought is not customarily available in the public domain.

  
\_\_\_\_\_  
James C. Deering  
Managing Member  
Nordic Energy Services, LLC

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of November, 2015

  
\_\_\_\_\_  
Notary Public

My Commission Expires: June 13, 2017

