

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

**DG 21-104**

**MOTION FOR CONFIDENTIAL TREATMENT AND PROTECTIVE ORDER**

Northern Utilities, Inc. (“Unitil” or the “Company”) respectfully requests that the New Hampshire Public Utilities Commission (the “Commission”) grant protection from public disclosure of certain confidential, sensitive, and proprietary information submitted in this docket pursuant to Puc 203.08 and RSA 91-A:5. Specifically, the Company requests that the Commission protect from public disclosure certain information contained in attachments to discovery responses, as identified in Appendix A to this motion (the “Confidential Attachments”).

As explained below, the Confidential Attachments contain confidential commercial and financial information; proprietary vendor data and work product; and individual employee compensation information, the disclosure of which would constitute an invasion of privacy. In support of this motion, Unitil states as follows:

**I. LEGAL STANDARD**

Puc 203.08(a) states that the 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.” In determining whether confidential, commercial, or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission applies a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Northern Utilities, Inc.*, DG 17-

070, Order No. 26,129 (May 2, 2018) at 15 (*citing Liberty Utilities (EnergyNorth) Natural Gas Corp.*, Order No. 26,109 (March 5, 2018) at 23). First, the Commission inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *Id.* Next, the Commission balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, disclosure should inform the public of the conduct and activities of its government, but if the information does not serve that purpose, disclosure is not warranted. *Id.*

## II. DISCUSSION

Appendix A summarizes the documents and types of information contained in the documents for which the Company seeks confidential treatment, including the specific attachment numbers, witnesses, and the basis for confidentiality of each document. None of the Confidential Attachments is public, and any release of the information would be highly prejudicial and harmful to the Company, its employees, customers, and vendors. Public disclosure would invade the privacy interests at stake in each of the Confidential Attachments, and the privacy interest substantially outweighs any public interest in disclosure. Moreover, public disclosure of the Confidential Attachments is not warranted because such disclosure is not necessary to inform the public of the conduct and activities of its government. *See Electric Distribution Utilities*, Order No. 25,811 (Sept. 9, 2015) at 5.

### ***A. Energy 4-02 Attachments (CGDN Workpapers 1.1 and 1.2, Schedule CGDN-6)***

Data request Energy 4-02 requests “live excel spreadsheets, with all links and equations intact, for all schedules and associated workpapers included in the Company’s filing.” In response, the Company provided, among other attachments, live excel versions of CGDN Workpapers 1.1 and 1.2 and Schedule CGDN-6. Unitil included a Motion for Protective Order in

connection with these workpapers and schedule with its initial August 2, 2021 filing; that motion remains pending before the Commission.

**i. Special Contract Revenue Adjustment (CGDN Workpapers 1.1 and 1.2)**

As explained in the testimony of Christopher Goulding and Daniel Nawazelski, and set forth in the Company's Schedule RevReq-3-2, the Company made an adjustment to total revenues to reflect certain known and measurable special contract rate increases. Unitil's workpapers supporting this Schedule, Workpapers 1.1 and 1.2, are provided with the Company's revenue requirement schedules and contain sensitive and confidential commercial and financial information including pricing and cost information from the Company's special contracts as well as customer usage data. Specifically, Workpapers 1.1 and 1.2 contain confidential special contract rates, including customer charges and monthly fixed charges, customer usage by them, and special contract revenues.

Unitil seeks to protect this information from public disclosure in order to protect Unitil's competitive position as well as that of the Customer. Release of the above-described confidential information would likely result in harm to the Customer in that it would divulge sensitive and confidential commercial and financial information that the Customer would not otherwise disclose. This information would be of interest to competitor entities and may be utilized to gain a superior competitive position over the Customer. Furthermore, Unitil seeks to protect this information from public disclosure in order to protect Unitil's competitive position. Release of the above-described confidential information would likely result in harm to Unitil in the form of being disadvantaged in price negotiations with customers or potential customers who have alternative options, whether from bypass, alternative fuel supplies, or from direct competitors. Public knowledge of the confidential information would impair Unitil's future bargaining

positions and thus its ability to obtain the maximum possible contribution to fixed costs. Unitil must be able to maximize such contributions to fixed costs as this benefits its firm ratepayers.

The Commission has previously evaluated and granted confidential treatment to the information that is similar or identical to the information contained in Workpapers 1.1 and 1.2. See DG 17-070, Order No. 26,129 at 16. The Company urges the Commission to reach the same conclusion in this case.

**ii. The Epping Discounted Cash Flow Analysis (Schedule CGDN-6)**

In its Order granting the Company's request for a franchise to operate in Epping, New Hampshire, the Commission directed Unitil to provide, in the Company's next rate case, a variance analysis comparing the original DCF analysis for the Epping franchise (DG 18-094 Hearing Exhibit 8) and a revised DCF analysis using actual costs and revenues and projected future revenues. DG 18-094, Order No. 26,220 at 12 (Feb. 8, 2019). Unitil provided the requested analysis as Schedule CGDN-6.

Schedule CGDN-6 contains the original results of the Company's DCF analysis, as well as updated results consistent with the Commission's direction. The DCF analyses are conducted using the Company's proprietary financial model. Unitil safeguards this information and does not disclose it to anyone outside of its corporate organization and its authorized representatives. Release of the confidential information contained in Schedule CGDN-6 would likely result in commercial harm to Unitil and its customers as the Company's competitors could use the information to Unitil's disadvantage. Unitil competes against providers of alternative energy suppliers, including fuel oil and propane, as well as other suppliers of natural gas delivered by traditional and non-traditional methods, and disclosure

of the Company's confidential analytical information as it relates to the Epping expansion project would impair the Company's competitive position.

Unitil previously sought, and received, confidential treatment for the results of the DCF analysis as conducted in connection with the Company's Epping expansion efforts. DG 18-094, Order No. 26,220 at 11 (Feb. 8, 2019). The updated DCF analysis is similarly sensitive, and the Commission should extend the same confidential treatment granted in DG 18-094 to the information in Schedule CGDN-6.

***B. Energy 4-15 Attachment 1 and Energy 4-16 Attachment 2***

Data requests Energy 4-15 and 4-16 seek, among other things, a list of participants who participate in the Company's Management Incentive Compensation and Restricted Stock Incentive Compensation plans, respectively, and the amount awarded to each individual in 2020. Energy 4-15 Attachment 1 and Energy 4-16 Attachment 2 provide the requested information.

The compensation of certain Unitil officers is public information which is annually disclosed in the Unitil Corporation's Proxy Statement filed with the federal Securities and Exchange Commission. The Company does not seek to protect this information from disclosure. The compensation of the remaining officers has not been previously disclosed or made publicly available. Moreover, Energy 4-15 Attachment 1 and 4-16 Attachment 2 contain incentive compensation information for non-officer personnel. Public disclosure of the compensation and benefit information for these employees could harm Unitil's ability to negotiate the terms of employment for its current and future employees. Moreover, allowing the Company's competitors access to such information could allow competitors an unfair advantage in competing to retain similar management and executive employees.

The above-described information meets the Commission's three-part test. The

compensation information is clearly confidential, commercial or financial, and disclosure of it would pose harm and constitute an invasion of privacy. The Commission protected substantively similar information provided in accordance with Puc 1604.01(a)(14) in Unitil's most recent rate case, DG 17-070. In that case, the Commission "protect[ed] the information regarding the compensation of Northern's officers, who are not officers of Unitil, from public disclosure, because disclosure could harm Northern's ability to attract qualified personnel." *Northern Utilities, Inc.*, DG 17-070, Order No. 26,129 at 15-16 (May 2, 2018); *see also EnergyNorth Natural Gas, Inc.*, Order No. 25,208 at 5 (Mar. 23, 2011) ("[W]e have noted that as to nonofficer employees, the disclosure of their information could cause harm by making it easier for other companies to recruit the employees away from the utility and potentially causing discord among individuals within the company."); *Pennichuck East Utilities Inc.*, Order No. 24,784 at 6 (Aug. 24, 2007) ("It is a longstanding practice of the Commission to grant confidential treatment to compensation data as to specific utility employees who are not officers."); *Northern Utilities, Inc.*, DG 01-182, Order No. 23,970 at 8-9 (May 10, 2002) (finding the benefits to the Company of non-disclosure of portions of employee compensation data not already made public outweigh the benefits to the public of disclosure.). Though the Commission has noted that the public has "some" interest in disclosure of this information, it found that the privacy interests in non-disclosure outweighed the public's interest in disclosure. DG 17-070, Order No. 26,129 at 16. The Commission should reach the same conclusion in this case.

***C. Energy 5-02 Attachments 1, 3, 4, 5, 7, 8, and 21***

Data request Energy 5-02 asks that the Company "provide copies of all presentations made to rating agencies and/or investment firms by the Unitil Corp. and/or Northern Utilities between January 1, 2018 and the present." In response, the Company provided, among other

attachments:

- Confidential Energy 5-2 Attachment 1 (presentation made to Moody's in 2018);
- Confidential Energy 5-2 Attachment 3 (presentation made to Moody's in 2020);
- Confidential Energy 5-2 Attachment 4 (presentation made to Moody's in 2021);
- Confidential Energy 5-2 Attachment 5 (presentation made to S&P in 2018);
- Confidential Energy 5-2 Attachment 7 (presentation made to S&P in 2020);
- Confidential Energy 5-2 Attachment 8 (presentation made to S&P in 2021);
- Confidential Energy 5-2 Attachment 21 (presentation made to potential investors during the Company's long-term debt financing in 2020).

These attachments contain, among other information, non-public, forward-looking financial projections.

As with information that might invade privacy, RSA 91-A also exempts from disclosure "confidential, commercial, or financial information." RSA 91-A:5, IV. The Commission should protect the Confidential Attachments containing non-public, forward-looking financial projections for several reasons. First, the Company maintains this non-public, forward-looking financial information as highly confidential and proprietary. The Company does not disclose the information publicly and considers it commercially sensitive and strategic, non-public business information. It would be highly prejudicial and harmful to the Company if this information were disclosed to the public, as well as to those who might look to use such information for their own gain. Any public disclosure of such information would be detrimental to the business interests of the Company in its service to customers and would allow unfair access to competitive information. Second, the manner in which the Company compiles and displays the information reflected in the composite financial forecasts and projections constitutes a trade secret and intellectual property of the Company.

Applying the Commission's balancing analysis, the privacy interests of the Company outweigh the public interest. If the Company's forward-looking financial forecasts were disclosed, it could injure Unitil's bargaining position when seeking new sources of capital, which

would be a detriment of customers. Also, the Company may have difficulty negotiating for the procurement of necessary services, materials and supplies from vendors in the future at the lowest cost, which would ultimately harm the Company's customers through higher prices for service. Furthermore, the release of such information outside of annual and quarterly reporting cycles required by securities laws also has the potential to cause a detrimental impact to the Company. As such, any public interest in this information is substantially outweighed by the Company's privacy interest and the potential harm that would be caused by release of the information.

The Commission has previously found financial projections to be exempt from disclosure. *See, National Grid USA, et al.*, DG 11-040, Order No. 25,370 (May 30, 2012) at 45 (protecting forward-looking financial assumptions related to a potential future rate increase); *Northern Utilities, Inc.*, DG 12-031, Order No. 25,330 (Feb. 6, 2012) at 6 (granting motion for protective order covering pricing and cost information and financial analyses); *Northern Utilities, Inc.*, Order No. 25,289 (Nov. 18, 2011) at 3-4 (protecting internal financial projections developed by the utility); *Unitil Energy Systems, Inc.*, Order No. 25,074 (Feb. 19, 2010) at 3 (protecting UES's financing reports "[b]ecause disclosure could hamper UES' ability to effectively negotiate for new sources of capital, we conclude that UES has an interest in the confidentiality of the information."); *Unitil Corporation and Northern Utilities, Inc.*, Order 25,014 (Sept. 22, 2009) at 5-6, 13-14 (protecting confidential strategies, business analyses, and revenue forecasts); *Unitil Energy Systems, Inc.*, Order No. 24,284 (Feb. 20, 2004) (protecting projections of UES's future sources of capital and estimates of its capital structure). The Commission also recently granted protective treatment to this information in Unitil Energy

Systems, Inc.'s rate case, *Unitil Energy Systems, Inc.*, Order No. 26,623 at 30-31 (May 3, 2022), and should reach a similar conclusion in this case.

***D. Energy 5-06 Attachment 1***

Data request Energy 5-06 asks that the Company “provide the breakdown in the expected return on pension plan assets for the Company,” and specifically requests “the expected return on different assets classes (bonds, US stocks, international stocks, etc.) used in determining the expected return on plan assets.” Confidential Energy 5-06 Attachment 1 provides the requested breakdown in the form of a presentation by SEI Investments Management Corporation. This attachment contains proprietary data and methodologies of a Company vendor / consultant, and should be granted protective treatment,

The Commission should protect the Confidential Attachments containing the proprietary, commercial publications of vendors, and the proprietary data, models, and work papers of the Company’s outside consultants and vendors from public disclosure. The business models of the Company’s consultants and vendors rely on providing their proprietary work products, studies, reports, and analyses only to entities that purchase it for a fee. Additionally, the methodology, formulae, and techniques underpinning their work are proprietary and confidential. If the Commission ordered dissemination of this proprietary information to the public, it would harm the business interest of the Company’s consultants and vendors because individuals and entities who want access to this specific data and proprietary analysis would not need to pay to obtain access to it. As a result, the disclosure of this information would have a chilling effect on the Company’s ability to attract necessary consultants and to procure necessary data because those vendors may fear that the Commission will ultimately release proprietary work product, data, algorithms, methodology, and analysis that would undermine their businesses. This result would

disadvantage the Company to the extent that the Company's consultants determine in the future not to bid on the Company's requests for services because of the potential competitive disadvantages that may arise should they do so; which would deprive the Company of access to certain expertise necessary for Commission proceedings.

In the Commission's privacy analysis, the privacy interest of the Company and its vendors are aligned with the public interest because if the Company's vendors' proprietary work product, data, surveys, and analyses were disclosed, the Company would have difficulty procuring these necessary services from vendors in the future. The Company's difficulty in procuring these services would ultimately harm the Company's customers due to increased cost to procure or develop these services through other limited means. For instance, the Company may receive fewer responses from consultants willing to provide such services or consultants may increase the amount charged to the Company to compensate for the risk of disclosure of their proprietary work product and analysis. This type of expertise and proprietary data must be obtained from outside consultants and vendors and it is critical to the rate case process. It would ultimately harm the Commission's processes if Unitil cannot procure these services or data. This type of information is necessary to enable the Commission to fully evaluate the Company's proposals. At the other end of the scale, the public's interest in disclosure of the proprietary, commercial publications of vendors, and the proprietary data, models, and work papers of the Company's outside consultants is slight because the information at issue has no bearing on the workings of government.

The Commission has protected third party proprietary information on the basis that the public interest is outweighed by such information that is sufficiently detailed that its disclosure would cause great economic harm and which was provided to the Company with the

understanding that its confidentiality would be maintained. *Liberty Utilities Corp.*, Order No. 26,209 (Jan. 17, 2019) at 43-44; *Liberty Utilities (Granite State Electric) Corp.*, Order No. 26,005 at 15 (Apr. 12, 2017); *Abenaki Water Company*, Order No. 25,840 (Nov. 13, 2014) at 2-3; *see also Northern Utilities, Inc.*, DG 20-078, Order No. 26,385 at 11 (July 28, 2020) (“We are cognizant that the analyses and related documents are copyright protected and were provided to the Company without authority to share the information publicly. Consequently, public release of the analyses could harm the Company’s ability to obtain this type of information in the future, because it could violate the terms of its agreement with the publishers and would harm the competitive interests of the publishers of the copyrighted materials if such information were provided to the public free. Those factors make the interest in nondisclosure more substantial.”).

In summary, the Company’s vendors and consultants would experience economic harm if their proprietary work product and analysis were disclosed to the public because their business models depend on providing their proprietary work product and analysis for a fee, which would be undermined if the public had free access to this same information. Additionally, the public would be harmed because service providers would be on notice that their information could be disclosed if they work with the Company and may choose not to provide the necessary service to the Company. This would result in limiting the Company’s options for service providers and create a less competitive solicitation for these necessary services, which could increase the cost for customers. The Commission also recently granted protective treatment to this information in Unitil Energy Systems, Inc.’s rate case, *Unitil Energy Systems, Inc.*, Order No. 26,623 at 30-31 (May 3, 2022), and should reach a similar conclusion in this case.

***E. Energy TS 1-23 Attachment 1***

Technical Session request Energy TS 1-23 Attachment 1 asks that the Company provide,

in addition to other information, two invoices from Consultant Concentric Energy Advisors (“Concentric”) that were determined not to be representative of the “Other O&M” expense population in the Company’s lead lag study. In response, the Company provided the invoices, which include confidential hourly rate information for Concentric.

RSA 91-A:5(IV) expressly exempts from the public disclosure requirements any records pertaining to “confidential, commercial or financial information.” RSA 91-A:5, IV; *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). Application of this exemption requires “analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy.” *Unitil Corp. and Northern Utilities, Inc.*, DG 08-048, Order No. 25,014 at 2 (Sept. 22, 2009). The Commission’s rule on confidential treatment of public records, PUC 203.08, also recognizes that confidential commercial or financial information may be appropriately protected from public disclosure pursuant to an order of the Commission. The determination of whether to disclose confidential information involves a balancing of the public’s interest in full disclosure with the countervailing commercial or private interests for non-disclosure.

Disclosure of the consultants’ billing information would put them at a competitive disadvantage by divulging the rates they charge for work. It would also adversely affect the Company because consultants would be discouraged from working with the Company if doing so would result in release of confidential business information. While the public has some interest in the billing information, that interest is balanced by the quality of the information which would be made public – the total amount invoiced to the Company for the consultant’s efforts. Therefore, while the Company requests protective treatment for the components of the billing information (e.g., hourly rates), the public would still have access to the total amount

billed. *See EnergyNorth Natural Gas, Inc.*, DG 08-009, Order No. 25,064 at (Jan. 15, 2010) at 12 (“publically available versions of all the documents contain a good deal of information concerning the costs of the underlying engagements”). Furthermore, the public has an interest in Unitil’s ability to work with the best and most cost-efficient consultants, and to require production of billing information of consultants would contradict this interest. *Id.* at 12 (“[D]isclosing the information may place the Company and its service providers at a disadvantage with respect to those with whom it would do business, ultimately causing harm to the Company’s ratepayers.”)

The interest of UES in the confidentiality of the information for which protection is sought outweighs the interest of the public in disclosure in this case. The Commission has previously granted protective treatment for such information, *see Unitil Energy Systems, Inc.*, DE 10-055, Order No. 25,214 at 37 (April 26, 2011), and should reach the same conclusion in this case.

### **III. CONCLUSION**

1. For the above reasons, Unitil requests that the Commission issue an order protecting the above-described information from public disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form.

WHEREFORE, Unitil respectfully requests that the Commission:

- A. Issue an appropriate order that exempts from public disclosure and otherwise protects as requested above the confidentiality of the above-described information designated confidential referenced above; and
- B. Grant such further relief as may be just and appropriate.

Respectfully Submitted,

NORTHERN UTILITIES, INC.

By:



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Dated: June 6, 2022.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of June 2022, a copy of the foregoing Motion was served to the service list in this docket.

A handwritten signature in black ink, appearing to read 'Patrick H. Taylor', written over a horizontal line.

Patrick H. Taylor