

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 21-104

NORTHERN UTILITIES, INC.

Request for Change in Rates

Order on Rate Case Expenses

O R D E R N O. 26,704

October 14, 2022

In this order the Commission approves Northern's rate case expenses of \$373,871 for inclusion in the LDAC, subject to subsequent audit and reconciliation.

I. PROCEDURAL HISTORY

On August 2, 2021, Northern Utilities, Inc. (Northern) petitioned the Commission for authority to implement new permanent rates for gas distribution service. On May 27, 2022, Northern, the Office of Consumer Advocate (OCA) and Staff of the Department of Energy (DOE) filed a settlement on permanent rates (Settlement). The Commission approved the Settlement by Order No. 26,650 (July 20, 2022). The Settlement included a provision allowing Northern to recover its rate case expenses through its reconciling rate mechanism, the Local Distribution Adjustment Charge (LDAC).

II. POSITIONS OF THE PARTIES

A. Northern

Rate Case Expenses

Section 8.2 of the Settlement provides that Northern's rate case expenses and regulatory proceeding expenses incurred by the Commission, the DOE, and the OCA,

and charged to the Company in this docket shall be recovered over one year within the LDAC through the Rate Case Expense Charge (REC), at a uniform rate per therm, in the Company's next scheduled LDAC rate change effective November 1, 2022. The Company made its LDAC filing on September 16, 2022, in Docket No. DG 22-059, which was updated on October 4, 2022, as described below.

Northern filed updated rate case expenses on September 16, 2022, and requested recovery of \$338,696.23. The total amount was supported by invoices from third-party consultants and outside providers. In its filing Northern also demonstrated that its request for proposals process was designed to obtain the lowest cost for the services provided. Northern noted in its September 16 filing that there was one additional outstanding invoice for Dr. Randall Woolridge's services provided to DOE. Northern indicated that it would process this invoice when it was received and would include the additional amount in the LDAC filing. Subsequently, on October 4, 2022, Northern made a filing in this docket presenting the invoices from Dr. Woolridge, and updating the amount of rate case expenses sought for recovery accordingly. The total amount to be recovered after November 1, 2022, through the LDAC, is \$373,871. (Northern expects that this would result in a rate case expense recovery factor for the LDAC of 0.48 cents per therm). *See also* Docket No. DG 22-059, Northern Second Supplemental Cost of Gas Filing, October 4, 2022, at Bates Pages 1, 14, and 17.

Motion for Confidential Treatment

With its rate case expense filing, Northern filed a motion requesting confidential treatment for the rate and billing information for consultants who performed work for Northern, and certain information about other clients of those consultants, included on select pages between Bates Pages 7 through 151, and between Bates Pages 166

through 409, of the documents filed with the Company's request for recovery of rate case expenses in this proceeding.

B. OCA

The OCA took no position on Northern's request to recover rate case expenses.

C. DOE

The DOE took no position on Northern's request to recover rate case expenses and did not provide an audit of those expenses.

III. COMMISSION ANALYSIS

Rate Case Expenses

We review rate case expenses in order to determine that the expenses are just and reasonable and were prudently incurred. RSA 378:7. *See also* N.H. Code of Admin. R. Puc 1904. Northern's rate case expense filing states that the expenses were incurred consistent with Puc 1905, and on their face, the summary and supporting documents appear reasonable. These expenses have not been subject to a thorough review and audit by DOE. As a result, we approve the expenses on a provisional basis and will allow inclusion of \$373,871 in the LDAC effective November 1, 2022. In the event a subsequent review and audit by DOE shows any errors or discrepancies in the rate case expenses, those corrections to the final expense amount will be handled through the reconciling LDAC process.

Motion for Confidential Treatment

The New Hampshire Supreme Court has interpreted the exemption for confidential, commercial, or financial information to require an "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." *Union Leader Corp. v. NH Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations omitted). "Furthermore,

the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, since these categorical exemptions mean not that the information is per se exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553 (citation omitted). The burden of proving that the information is confidential and private rests with the party seeking non-disclosure. *See Goode v. NH Legislative Budget Assistant*, 148 N.H. 551, 555 (2002).

RSA 91-A:5(1V) expressly exempts from public disclosure requirements any "records pertaining to ... confidential, commercial or financial information ... " In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08(b).

The Supreme Court has stated that the determination of whether information is confidential or private must be made "objectively, and not based on the subjective expectations of the party generating it." *Union Leader Corp. v. NH. Housing Fin. Auth.*, 142 N.H. at 553. Moreover, the Court has found instructive the federal test for confidential information under which "the party resisting disclosure must prove that disclosure is likely to: (1) impair the State's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." *Id.* at 554 (quotation and brackets omitted).

In this case Northern seeks protection for information about the contract, billing arrangements and rates of Northern's consultants for the provision of testimony and support for cost of equity, revenue decoupling, depreciation, and the accounting and marginal cost studies and rate design in this case. Additionally, as part of their RFP responses, certain of the consultants provided information about other clients for whom they had performed work. According to Northern, disclosure of the consultants' contract and billing information would put them at a competitive disadvantage by divulging the rates they charged for work. Northern claims this would adversely affect the Company because in future dockets consultants would be discouraged from participating in RFPs if doing so would result in release of confidential business information.

We find that both contract billing arrangements and the identity of other clients for whom consultants have worked is confidential commercial or financial information and is protected by RSA 91-A:5(1V). We also find that the basis of the costs that Northern seeks to recover from rate payers is of interest to the public. When the public's right to know in this case is balanced against the privacy interest at stake the balance favors protection of these internal billing details and client identities. The public does, however, have access to the total billed amounts for each of the services. We therefore grant Northern's motion for confidential treatment of this information.

Based upon the foregoing, it is hereby

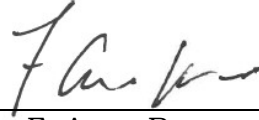
ORDERED, that Northern may include \$373,871 as rate case expenses in its LDAC effective on November 1, 2022, for recovery over a one-year period on a provisional basis subject to further adjustment and reconciliation following DOE review and audit of the expenses; and it is

FURTHER ORDERED, that Northern's motion for confidential treatment is GRANTED.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of October, 2022.



Daniel C. Goldner
Chairman



F. Anne Ross
Special Commissioner

Service List - Docket Related

Docket#: 21-104

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