

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 21-104

NORTHERN UTILITIES, INC.

Request for Change in Rates

Order on Motion for Confidential Treatment

O R D E R N O. 26,732

November 22, 2022

In this order the Commission grants the requested confidential treatment of information including, certain financial analyses, billing rates of third-party consultants, employee compensation, presentations to rating agencies, and forecasts of returns on various classes of pension plan assets.

I. PROCEDURAL HISTORY

On June 6, 2022, Northern Utilities, Inc. (Northern) filed a Motion for Confidential Treatment (Motion) of a number of discovery responses it provided to the Department of Energy (DOE) and the Office of Consumer Advocate (OCA). No party objected to the Motion.

On July 20, 2022, the Commission issued Order No. 26,650 in which it approved permanent rates for Northern and granted confidential treatment to information described in two motions for confidential treatment filed by Northern on August 2, 2021, and May 27, 2022. On October 14, 2022, the Commission issued Order No. 26,704 approving the recovery of rate case expenses and granting confidential treatment to information described in a motion for confidential treatment filed by Northern on August 18, 2022.

II. MOTION FOR CONFIDENTIAL TREATMENT

In its Motion Northern described five categories of information for which it sought confidential treatment. The first category of information included financial analysis and live spreadsheets relating to Northern's special contracts and also relating to the addition of the Epping franchise. The second category of information included individual employee compensation and benefits. The third category of information contained presentations to rating agencies and investment firms containing Northern's forward looking financial projections. The fourth category of information dealt with the returns projected by a third party for Northern's various pension assets. The fifth category of information involved invoices containing hourly billing rates from a third-party consultant. As to each of these categories of information Northern argued that the information was proprietary and that its release to the public would cause harm to Northern and would negatively impact its ability to do business in the future.

III. COMMISSION ANALYSIS

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).

In furtherance of the Right-to-Know law, 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, IV expressly exempts from public disclosure requirements any “records pertaining to ... confidential, commercial or financial information” In determining whether commercial or financial information should be deemed confidential and private, we consider the three-step analysis applied by the Commission’s rule on requests for confidential treatment, N.H. Code Admin. Rules Puc 203.08. The rule is designed to facilitate the balancing test required by the relevant case law by requiring 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. *See* Puc 203.08(b).

A. Financial analysis of Special Contracts and Epping Franchise

Northern seeks to protect information contained in its revenue schedules and work papers included in discovery responses. The workpapers are related to its special contracts with certain customers and with the Epping franchise. Northern asserts that the schedules and workpapers contain sensitive and confidential commercial and financial information including customer usage data, confidential special contract rates, customer charges and monthly fixed charges, customer usage by therm, and special contract revenues. Northern asserts that the Epping financial analysis contains customer costs and revenues and projected costs and revenues based on a proprietary financial model. We have already found that this information is entitled to

confidential treatment, and we therefore grant this request. *See* Order No. 26,650 (July 20, 2022) at 19-20.

B. Employee Compensation

Northern seeks confidential treatment for information concerning management incentive compensation and restricted stock incentive compensation. Northern claims that this information is private, and that its disclosure would impair Northern's ability to recruit employees in the future. Northern does not request confidential treatment of the employee compensation disclosed in its filings with the Securities and Exchange Commission (SEC). Because the employee compensation filed with the SEC is already public, we agree that it cannot be protected. As to individual employee compensation and benefits not disclosed to the SEC, we have already found that this information is entitled to confidential treatment and we therefore grant this request. *See* Order No. 26,650 at 19.

C. Presentations to rating agencies and investment firms

Northern seeks to protect this information from public disclosure in order to protect Northern's competitive position. Northern treats its forward-looking financial projections as proprietary and alleges that its disclosure would allow competitors to use it to their own advantage and would be detrimental to Northern's business interest. Finally, Northern asserts that the format and method for these projections is a trade secret.

We find that this information is confidential. We also find that Northern's forecasts of its future performance is of some interest to the public. When the interest in disclosure is balanced against the competitive harm that disclosure could cause, we find the balance favors protecting Northern's financial presentations to rating agencies and investment firms. We grant the motion to keep that information confidential.

D. Future Return on Pension Assets

Northern requests confidential treatment of responses to data requests asking for the expected return on different assets classes of pension assets (bonds, US stocks, international stocks, etc.). In its response Northern provided a presentation by SEI Investments Management Corporation (SEI) which contained proprietary data and methodologies of SEI. Northern argued that if this proprietary information were disclosed to the public, it would harm the business interest of the Company's consultants and vendors. Disclosure would allow individuals and entities who want access to this specific data and proprietary analysis to obtain access to it without paying. As a result, the disclosure of this information would have a chilling effect on Northern's ability to attract necessary consultants and to procure necessary data in the future

We agree that SEI's projected returns on pension assets are proprietary and we find that the public has some interest in such estimates of future pension performance because it may impact Northern's financial condition. Nonetheless, when we balance the public's interest in disclosure against the need to protect SEI's earnings forecasts we find that the balance weighs in favor of keeping such information confidential. Therefore, we grant Northern's request to protect this information from disclosure.

E. Consultant Invoices

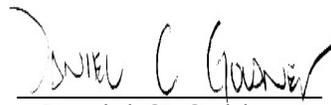
Northern seeks to protect two invoices that it provided in response to data requests. The two invoices were from a consultant, Concentric Energy Advisors (Concentric), and included confidential hourly rate information for Concentric. Earlier in this docket we found that the hourly billing rates of Northern's consultants are entitled to confidential treatment, and we adopt that analysis as to the Concentric

invoices. See Order No. 26,704 (October 14, 2022) at 5. Therefore, we grant Northern's request for confidential treatment of the billing rates contained in these two invoices.

Based upon the foregoing, it is hereby

ORDERED, that Northern's Motion for Confidential Treatment filed on June 6, 2022, is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of November, 2022.



Daniel C. Goldner
Chairman



F. Anne Ross
Special
Commissioner

Service List - Docket Related

Docket#: 21-104

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