

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

National Grid USA, National Grid NE 2 Holdings LLC,
Granite State Electric Company d/b/a National Grid,
EnergyNorth Natural Gas, Inc. d/b/a National Grid NH,

- and -

Liberty Energy Utilities Co. and Liberty Energy Utilities (New Hampshire) Corp.

Docket No. DG 11-040

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

National Grid USA (“National Grid”), in accordance with Puc 203.08, hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment to certain information contained in the Escrow Agreement being filed by National Grid with the Commission contemporaneously with this motion. In support of its motion, National Grid states as follows:

1. In connection with the sale of its New Hampshire utility subsidiaries, and in accordance with the terms of the approved Settlement Agreement in this proceeding, National Grid intends to enter into an Escrow Agreement with Bank of America, National Association (“BOA”). BOA has informed National Grid that it considers certain provisions of the Escrow Agreement to be confidential, commercially-sensitive business information and the form of agreement being filed with the Commission includes a confidentiality provision that requires National Grid to seek confidential treatment of such information.

2. Administrative Rule 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)].” N.H. Code of Admin. Rules Puc 203.08.

3. Records that contain “confidential, commercial, or financial information” are expressly exempt from public disclosure. RSA 91-A:5, IV.

I. STANDARD FOR GRANTING PROTECTIVE TREATMENT

4. In determining whether to grant protective treatment, the Commission applies a three-step analysis developed by the New Hampshire Supreme Court. *Unitil Corp. & Northern Utilities*, DG 08-048, Order No. 25,014 at 3 (September 22, 2009) (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008)). The analysis first requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. Second, where such a privacy interest is at stake, the public’s interest in disclosure is assessed. *Lambert*, 157 N.H. at 382-83. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interest in non-disclosure. *Id.*

II. THE COMMISSION SHOULD GRANT PROTECTIVE TREATMENT TO CERTAIN PORTIONS OF THE ESCROW AGREEMENT THAT CONSTITUTE CONFIDENTIAL BUSINESS INFORMATION

5. RSA 91-A:5, IV states, in pertinent part, that records pertaining to “confidential, commercial, or financial information” are exempt from public disclosure. The Commission has routinely recognized that confidential treatment should be granted to confidential or proprietary information under the 91-A:5 exemption for “confidential, commercial, or financial information.” *See, e.g., Northern Utilities, Inc.*, DG 10-034, Order No. 25,085 at 9; *Unitil Corp.*

and Northern Utilities, Inc., DG 08-048, Order No. 25,014 at 6 (Sept. 22, 2009). The analysis applied by the Commission for the confidentiality of sensitive commercial information “is essentially the same as for that regarding potential invasions of privacy, but for the fact that the information must also be determined to be confidential, commercial, or financial information, in addition to being information in which there is a privacy interest.” *EnergyNorth Natural Gas d/b/a National Grid NH*, Order No. 25,208 at p. 8 (March 23, 2011).

6. The information contained in Article 3 of the Escrow Agreement, entitled Disbursements from the Escrow Account, details both the entity authorized to make disbursements from the Escrow Account and the method by which such disbursements shall be requested and made. Schedule 3.1, entitled Disbursement Request, is a sample document authorizing the disbursement of funds. Disclosure of this sensitive, commercial and confidential information creates a risk of fraud to both National Grid and BOA.

7. A person with knowledge of the disbursement procedures and the persons authorized to make the disbursements, together with the sample document, Schedule 3.1, might be able to misappropriate funds by fraudulently purporting to authorize transfers out of the Escrow Account. This is particularly true given the sophisticated nature of home printing equipment to produce seemingly official looking documents, information regarding corporate logos, letterhead and the like that is widely available in the public domain, and the extensive use of the Internet and email as a means of inducing parties to convey funds or other information without proper authorization..

Public disclosure of this information will not provide the public with information about the conduct or activities of the Commission or other parts of New Hampshire state or local government, *see Public Service Co. of N.H.*, DE 09-158, Order No. 25,059 at 14-15 (December

31, 2009), and there is no public interest that outweighs National Grid's or BOA's interests in maintaining the confidentiality of such sensitive commercial and financial information to minimize the risk of fraud. This is particularly true where, as here, only a minimal amount of information has been redacted from the publicly-filed material. For these reasons, the Commission should grant confidential treatment to National Grid's confidential business information.

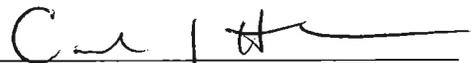
WHEREFORE, National Grid respectfully requests that the Commission:

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

Respectfully submitted,

National Grid USA,
By its Attorneys

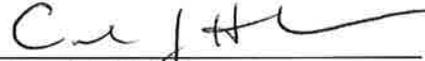
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Certificate of Service

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.



Carol J. Hohan