

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

National Grid USA, National Grid NE Holdings 2 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. _____

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

National Grid USA (“National Grid”), National Grid NE Holdings 2 LLC, Granite State Electric Company d/b/a National Grid (“Granite State”), and EnergyNorth Natural Gas, Inc. d/b/a National Grid NH (“EnergyNorth”, collectively with Granite State the “Companies”), in accordance with Puc 203.08, hereby move the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment to certain information provided to the Commission in connection with the Joint Petition for Authority to Transfer Ownership of Granite State Electric Company and EnergyNorth Natural Gas, Inc. to Liberty Energy Utilities (New Hampshire) Corp. and for Related Approvals submitted in the above-captioned matter. In support of their motion, the movants state as follows:

1. On December 8, 2010, National Grid and Liberty Energy Utilities Co. (“Liberty Energy”) entered into a stock purchase agreement for the sale of Granite State, and National Grid, National Grid NE Holdings 2 LLC, and Liberty Energy entered into a stock purchase agreement for the sale of EnergyNorth. On January 21, 2011, the parties modified both stock purchase agreements

in several limited respects and executed two separate amended and restated stock purchase agreements (as amended, the “SPAs”). Specifically, the SPAs are structured as a purchase by Liberty Energy for cash of all of the issued and outstanding common stock of both Granite State and EnergyNorth from National Grid or its subsidiaries (the “Stock Transfers”). Liberty Energy subsequently assigned its rights under the SPAs to Liberty Energy Utilities (New Hampshire) Corp. (“Liberty Energy NH”) on February 16, 2011. Following the consummation of the Stock Transfers, Granite State and EnergyNorth will each become wholly-owned subsidiaries of Liberty Energy NH and will continue to provide electric and natural gas distribution service, respectively, to New Hampshire customers.

2. Copies of the SPAs are being filed with the Commission contemporaneously with the filing of the Joint Petition. (The SPAs are identified in the filing as Joint Petitioners Attachment 3 and 4.)

3. Included with the SPAs are Seller Disclosure Schedules (“Schedules”) for Granite State and EnergyNorth. Several of these schedules contain, in whole or in part, information that is exempt from disclosure as a governmental record pursuant to RSA 91-A:5, IV.

I. Sections 1.1(a) of the Schedules (“Corporate Employees”); Section 1.1(e) of the Granite State Schedules and Section 1.1(f) of the EnergyNorth Schedules (“Represented Employees”)

4. Section 1.1(a) of the Schedules to the Granite State and EnergyNorth SPAs contain information specific to certain of the Companies’ corporate employees, including job title, annual salary, ID number, and other identifying data.

5. Furthermore, Sections 1.1(e) and 1.1(f) of the Schedules to the Granite State and EnergyNorth SPAs, respectively, contain similar information specific to certain employees of the Companies that are represented by labor unions.

6. The confidential information contained in these sections should be exempted from disclosure pursuant to RSA 91-A:5, IV, which protects “[r]ecords pertaining to internal personnel practices [and] confidential, commercial, or financial information,” as well as “personnel . . . and other files whose disclosure would constitute an invasion of privacy.”

7. As the Commission has frequently noted, New Hampshire courts apply a three-step analysis when considering whether disclosure of governmental records constitutes an invasion of privacy. First, the Court evaluates whether there is indeed a privacy interest at stake that would be invaded by disclosure; second, whether there is a public interest in disclosure; and third, whether the public interest in disclosure outweighs the individual privacy interest in nondisclosure. *See Lamy v. N.H. Pub. Util Comm’n*, 152 N.H. 106, 109 (2005); *N.H. Civil Liberties Union v. City of Manchester*, 149 N.H. 437, 440 (2003).

8. There is a clear privacy interest in the personnel information contained in the sections of the Schedules described above. This information is not disclosed to the public, as it is the Companies’ practice to maintain private personnel information, including any materials or data specific to individual employees, in strict confidence. The employees for whom identifying information is provided in the Schedules have a reasonable expectation of privacy in their salaries, job titles, and other personnel information, and disclosure will constitute an invasion of that privacy.

9. The Commission has previously granted confidential treatment to similar personnel information that is not otherwise publicly disclosed. *See, e.g., Northern Utilities, Inc.*, DG 01-182, Order No. 23,970 at 8-9 (May 10, 2002) (protecting employee names and wages) (citing *Re Union Telephone Company*, 81 NH PUC 525, 526 (1996), *Pennichuck Water Works*, DG 01-081, Order No. 23,842, dated November 16, 2001). Furthermore, 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 the privacy interest of the Companies' employees.

10. For the foregoing reasons, the Commission should grant this motion for confidential treatment of the personnel information contained in Section 1.1(a) of the Schedules to the Granite State and EnergyNorth SPAs and Sections 1.1(e) and 1.1(f) of the Schedules to the Granite State and EnergyNorth SPAs, respectively.

II. Section 5.8 of the Schedules ("Environmental Matters")

11. Section 5.8 of the schedules to the Granite State and EnergyNorth SPAs contain information describing potential liabilities that National Grid was required to disclose pursuant to the SPAs, as well as the details of confidential settlement agreements with third parties relative to the remediation of certain sites.

a. Potential Liabilities

12. Specifically, Section 5.8, paragraph 2 of the Granite State Schedules generally describes certain minor occurrences for which Granite State may or may not have associated liabilities. To the extent that such liabilities are not established, public disclosure of this information may expose Granite State to costly litigation that will cause economic harm to the company and, potentially, its customers.

13. Section 5.8, paragraphs 3(c), (d), (g), (h), and (j) of the EnergyNorth Schedules all contain information describing properties for which EnergyNorth may or may not have associated liabilities. To the extent that such liabilities are not established, public disclosure of

this information may expose EnergyNorth to costly litigation that will cause economic harm to the company and, potentially, its customers.

14. RSA 91-A:5, IV provides, in relevant part, that records pertaining to “confidential, commercial, or financial information” are exempt from public disclosure. The potential liabilities stated in the above-described paragraphs constitute confidential commercial information, and public release of this information may cause financial harm to the Companies, and may also impair similar transactions in the future.

15. Full and candid disclosure of potential but unestablished liabilities is an essential component of a commercial transaction such as National Grid’s proposed sale of Granite State and EnergyNorth to Liberty Energy NH. If this information is released publicly, the Companies may be subject to costly litigation that they may not otherwise have been subject to, a result that would present significant financial consequences to the Companies and, ultimately, their customers.

16. Public release of this information may also impair future transactions, as potential buyers may be dissuaded from entering into a transaction where disclosure of possible but unestablished liabilities would increase the probability of litigation following consummation of the purchase.

17. Public disclosure of this otherwise confidential information will “not shed any appreciable light on the Commission’s conduct and activities,” *National Grid plc*, DG 06-107, Order No. 24,777 at 87 (July 12, 2007), and there is no public interest outweighing the potential harm to the Companies if disclosure occurs. As such, the movants respectfully request that the Commission grant confidential treatment to Section 5.8, paragraph 2 of the Granite State Schedules and Section 5.8, paragraphs 3(c), (d), (g), (h), and (j) of the EnergyNorth schedules.

b. Confidential Settlement Agreements

18. Section 5.8, paragraphs 3(a), (e), and (f) of the EnergyNorth Schedules describe properties relative to which EnergyNorth has entered into confidential settlement agreements with third parties to facilitate and/or receive contribution for associated remediation activities. To the extent that these paragraphs describe the parties to or contents of such confidential settlement agreements, they contain confidential commercial or financial information that should be granted protective treatment in accordance with RSA 91-A:5, IV.

19. Public disclosure of the parties to or contents of the above-described confidential settlement agreements will jeopardize the agreements themselves and make it more difficult for EnergyNorth to enter into environmental litigation settlements in the future, a result which will disadvantage customers as well as the Companies. Recognizing this, the Commission has granted confidential treatment to such information in the past. *See, e.g., EnergyNorth Natural Gas, Inc.*, DG 03-160, Order No. 24,215 at 12-13 (Oct. 2, 2003); *EnergyNorth Natural Gas, Inc.*, 99-132, Order No. 23,316 at 5-6 (Oct. 11, 1999). Furthermore, these settlement agreements are subject to confidentiality provisions, and the Companies are obliged to seek protection for their contents on behalf of the other parties to the agreements.

20. The interest of EnergyNorth, as well as its customers, in non-disclosure outweighs public interest in gaining access to information describing the parties to or contents of the above-described confidential settlement agreements. *See EnergyNorth Natural Gas, Inc.*, DG 03-160, Order No. 24,215 at 12. The Commission should therefore grant confidential treatment to this information pursuant to RSA 91-A:5, IV.

III. Section 5.12 of the Granite State Schedules (“Legal Proceedings”)

21. Section 5.12, paragraph 1 of the Granite State Schedules describes a potential liability for Granite State in connection with a pending case to which it has not been named a party. Public disclosure of this paragraph will expose Granite State to potential inclusion as a party in this pending litigation, a result that will have adverse financial effects upon Granite State.

22. As described in the previous section, full and candid disclosure of potential liability is an essential component of a commercial transaction such as National Grid’s proposed sale of Granite State and EnergyNorth to Liberty Energy NH. Disclosure of Section 5.12, paragraph 1 will increase the probability that Granite State will be named as a party in pending litigation, a result that would present significant financial consequences to Granite State and potentially affect its customers.

23. Public release of this information may also impair future transactions, as potential buyers may be dissuaded from entering into a transaction where disclosure of potential liability increases the probability of litigation following consummation of the purchase.

24. While the pending litigation referenced in Section 5.12, paragraph 1 of the Granite State Schedules is itself a matter of public record, the potential for Granite State to be named as a party is not. There is no public interest in gaining access to this information that outweighs the likely harm to Granite State and its customers from disclosure, and the Commission should grant confidential treatment to this information pursuant to RSA 91-A:5, IV.

IV. Section 5.15 of the Granite State Schedules (“Taxes”)

25. Section 5.15 of the Granite State Schedules comprises a non-public and confidential assessment of a pending IRS examination and its anticipated result. This is sensitive and confidential financial information that requires confidential treatment pursuant to RSA 91-A:5.

26. The information contained in Section 5.15 of the Granite State Schedules is competitively sensitive and contains a non-public assessment of tax matters that are not yet settled. National Grid is obliged to provide this candid assessment of potential tax liabilities to Liberty Energy NH in connection with the sale of Granite State, but this information is not otherwise publicly disclosed and it falls squarely within the exemption from public disclosure for “confidential, commercial, or financial information” set forth in RSA 91-A:5, IV.

27. Public disclosure of this otherwise confidential information will “not shed any appreciable light on the Commission’s conduct and activities,” *National Grid plc*, DG 06-107, Order No. 24,777 at 87, and there is no public interest in disclosing this information. Moreover, the Commission has granted protective treatment to confidential tax information in the past. *See Unitil Corporation and Northern Utilities, Inc.*, DG 08-048; Order No. 25,014 at 9, 11 (Sept. 22, 2009); *Sacoridge Water, Inc.*, DW 05-054; Order No. 24,561 at 10 (Dec. 9, 2005). The Commission should therefore grant confidential treatment to this information pursuant to RSA 91-A:5, IV.

V. Section 7.1 of the Schedules (“Conduct of the Business of the Companies”)

28. Section 7.1, Paragraph 4 of the Schedules to the Granite State SPA and Section 7.1, Paragraph 2 of the Schedules to the EnergyNorth SPA describe potential strategies for labor negotiations that have not yet occurred. The information contained in these paragraphs is competitively sensitive, confidential commercial or financial information that should be granted protective treatment in accordance with RSA 91-A:5, IV

29. Public disclosure of the strategic information contained in the above-described paragraphs will grant an unfair advantage to unions with which Granite State and EnergyNorth

may negotiate in the future, and thereby impair the ability of the Companies to achieve favorable and economically beneficial results in such negotiations.

30. The Commission has often granted confidential treatment to information that, if disclosed, will put the moving party at a disadvantage in future negotiations. *See, e.g., Public Service Cor. of N.H.*, DE 10-257, Order No. 25,187 at 7, 9-10 (Dec. 29, 2010); *Northern Utilities, Inc.*, DG 03-179, Order No. 24,228 at 9 (Oct. 30, 2003); *cf. National Grid plc*, DG 06-107, Order No. 24,777 at 86 (“If public disclosure of confidential, commercial or financial information would harm the competitive position of the person from whom the information was obtained, the balance would tend to tip in favor of non-disclosure.”).

31. Disclosure of the confidential strategic information described above will “not shed any appreciable light on the Commission’s conduct and activities,” *National Grid plc*, DG 06-107, Order No. 24,777 at 87, and there is no public interest outweighing the harm that will be done to the Companies should the information not be granted confidential treatment. The Commission should therefore grant confidential treatment to this information pursuant to RSA 91-A:5, IV.

32. Liberty Energy and Liberty Energy NH support this Motion and the relief sought herein.

WHEREFORE, the movants request that the Commission:

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

Respectfully submitted,

NATIONAL GRID USA,

NATIONAL GRID NE HOLDINGS 2 LLC,

GRANITE STATE ELECTRIC COMPANY d/b/a
NATIONAL GRID,

and

ENERGYNORTH NATURAL GAS, INC.
d/b/a NATIONAL GRID NH

By their Attorneys,

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Certificate of Service

I hereby certify that a copy of this Motion for Protective Order and Confidential Treatment has this day been sent electronically or by First Class Mail to Meredith A. Hatfield, Esq., Consumer Advocate, Alan Linder, Esq. (without confidential material), and Evan Mulholland, Esq. (without confidential material).

Dated: March 4, 2011



Steven V. Camerino