

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 11-069

NORTHERN UTILITIES, INC.

Petition for Permanent Rate Increase

Order Granting Motion for Confidentiality

ORDER NO. 25,251

July 18, 2011

On March 31, 2011, Northern Utilities, Inc. (Northern or Company) filed a notice of intent to file rate schedules implementing new permanent delivery rates for natural gas service. On May 4, 2011, the Company made its filing requesting permission to implement the new permanent rates, together with a request for implementation of temporary delivery rates pursuant to RSA 378:27, among other matters. The Company also filed, on May 4, 2011, a Motion for Protective Order and Confidential Treatment, pursuant to N.H. Code Admin. Rules Puc 203.08, for certain materials provided as part of its rate case filing alleged to contain competitively sensitive information concerning the Company and entities with which it does business.

Specifically, the Company seeks confidential treatment for accounting and marginal cost modeling spreadsheets prepared by its consultant Management Applications Consulting, Inc. (MAC Models), and also seeks confidential treatment for certain attachments to its responses, provided within Volume 4 of the Company's supplemental filings made in compliance with Puc 1604.01(a), presenting certain of the Company's internal capital budget projections (Volume 4 Projections). No one has objected to the motion. Also, we commend the Company for tailoring its requests to seek protection for only so much information as is necessary, rather than attempting to widely shield information in its submission.

For the responses provided within the Volume 4 Projections, the Company submitted both public and confidential versions of the information for which it now seeks confidential treatment, and the Company has disseminated the public versions of these materials among all parties. Thus, any grant of the motion with respect to the Volume 4 projections will cover the information contained in the confidential versions and the public versions will remain disclosed. (For the MAC Models, confidential treatment is requested by the Company *in toto*).

The Right-to-Know Law, RSA 91-A:5, IV, states, in relevant part, that records of “confidential, commercial, or financial information” are exempted from disclosure. *See Unutil Corp. and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) at 2. In determining whether commercial or financial information should be deemed confidential, we first consider whether there is a privacy interest that would be invaded by the disclosure. *Id.* at 2-3. Second, when a privacy interest is at stake, the public’s interest in disclosure is assessed. *Id.* at 3. 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 interests in non-disclosure. *Id.* This is similar to the Commission’s rule on requests for confidential treatment. *See Puc 203.08; see also Unutil Corp. and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) at 3.

The Company seeks to protect, in their entirety from public disclosure, the MAC Models provided to Staff and the Office of the Consumer Advocate (OCA) on May 4, 2011, as part of its filing. According to the Company, the MAC Models contain proprietary modeling information created by its consultant MAC, which are confidential trade secrets. The Company argues that MAC has a privacy interest in its proprietary models, in that disclosure of this information would

cause great competitive harm to MAC, far outweighing any limited benefits to the public interest arising from disclosure. The Company also asserts that public disclosure of the MAC Models would likely result in competitive harm to Northern, in that disclosure of the MAC Models could discourage MAC and other consultants from dealing with Northern in the future, for fear of having their trade secrets disclosed to competitors.

We agree with the Company that the proprietary models and related spreadsheets created by MAC are commercial information in which a strong privacy interest resides. Further, competitive harm may befall MAC if this modeling-related information is disclosed. *See Union Leader Corp. v. NH Housing Fin. Auth.*, 142 N.H. 540, 554 (1997), *cited in Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009). Although the Company does not elucidate the public's interest in disclosure of this information in its motion, we find that the public's interest in disclosure of the MAC Models is slight (though the public interest in Staff's and OCA ability to independently examine the MAC Models is great), especially in light of the fact that the information at issue has no bearing on the workings of government. Thus, in weighing these interests we conclude that the Company's motion for confidential treatment should be granted for the MAC Models. This position is consistent with our previous conclusions related to such modeling-related information. *See EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,208 (March 23, 2011) at 10.

In its Volume 4 Projections, the Company, in response to the supplemental rate case filing requirements of Puc 1604.01(a)(22) and 1604.01(a)(25), provided Staff and OCA with its internal capital planning projections for the calendar years 2011 and 2012 for itself and its parent company, Unitil Corporation (Unitil), respectively. The Company asserts in its motion that disclosure of the information presented within the Volume 4 Projections would cause great

competitive harms for Northern and its parent Unitil, as disclosure could implicate technical violations of federal securities laws, and cause Northern and Unitil harm in future negotiations with purchasers of their long-term debt securities.

We agree with the Company that it has a strong privacy interest in the information provided in its Volume 4 Projections, in that the information relates to Northern's and Unitil's enterprise-wide capital planning, that is not disclosed publicly in any context. Although the Company does not directly address the RSA 91-A factor of public interest in disclosure in its motion, we are obligated to do so. There does not appear to be a strong public interest in disclosure based upon the information providing the public with insight into the activities of government; on the contrary, the information relates to the Company's (and Unitil's) own internal planning. As a result, we find that the balance tips against disclosure of the information presented within the Volume 4 Projections.

Based upon the foregoing, it is hereby

ORDERED, that the motion for confidential treatment is granted as set forth above, except to the extent that the information may have been publicly disclosed elsewhere since the motion was filed; and it is

FURTHER ORDERED, that this ruling on the motion for confidential treatment is, consistent with Puc 203.08(k), subject to the Commission's on-going authority, on its own motion, on the motion of Staff, or on the motion of any member of the public, to reconsider the Commission's determinations.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of
July, 2011.

Thomas B. Getz
Thomas B. Getz (KNS)
Chairman

Clifton C. Below
Clifton C. Below (KNS)
Commissioner

Amy Ignatius
Amy L. Ignatius
Commissioner

Attested by:

Debra A. Howland
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07/18/11 Order No. 25,251 issued and forwarded to all parties. Copies given to PUC Staff.

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:
DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.