

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**

**Docket No. DG 11-**

**NORTHERN UTILITIES, INC.**  
**PETITION FOR APPROVAL OF**  
**THIRD AMENDMENT TO SPECIAL CONTRACT**  
**WITH NATIONAL GYPSUM COMPANY**

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT**

NOW COMES Northern Utilities, Inc. ("Northern"), by and through its undersigned attorneys, and, pursuant to RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08(b), respectfully moves the New Hampshire Public Utilities Commission ("the Commission") to issue a protective order which accords confidential treatment to certain information described below and submitted herewith. In support of this Motion, Northern states as follows:

1. Northern is filing contemporaneously with this Motion, a Petition for Approval of a Third Amendment to a special contract with National Gypsum ("the Customer"). The Amendment does three things: 1) it extends the existing National Gypsum special contract for five years; 2) it amends the contract to automatically permit up to three one-year term extension periods after the expiration of the above-referenced five- year extension; and 3) it amends the contract to eliminate certain penalties if National Gypsum permanently closes and ceases operations at its Portsmouth, NH facility. Certain supporting documents filed with the petition contain confidential information. Those

documents include: the prefiled testimony of Michael Smith, a letter from the Customer describing the special circumstances that support extending the special contract (Schedule NU 1-1); the original special contract (Schedule NU 1-2); Northern's estimate of the Customer's costs to bypass Northern's system (Schedule NU 1-6); results for the customer's value of service alternative (Schedule NU 1-7); and Northern's marginal cost of service analysis for the customer (Schedule NU 1-8). Pursuant to N.H. Admin. Rule Puc 203.08 (b) and (f) and Puc 201.04 (c), Northern has submitted confidential/unredacted copies of the above-referenced documents for which confidential treatment is sought and has highlighted the portions of the confidential/unredacted copies that have been redacted in the publicly-filed versions of the documents.

2. All of the above-referenced documents contain competitively sensitive commercial information which Northern does not disclose to anyone outside of its corporate organization or its authorized representatives. As such, the information is entitled to be protected from public disclosure under RSA 91-A:5, IV. *See also* RSA 350-B ("Uniform Trade Secrets Act").

3. Northern seeks to exempt the above-referenced documents (or portions of them as applicable) from disclosure on the public record of this docket in order to protect Northern's competitive position and to protect the Customer's competitive position. Release of the above-described confidential information would likely result in harm to Northern in the form of being disadvantaged in its bargaining position with other customers seeking special contracts who have alternative service options, whether through bypass or from alternative energy sources. Public disclosure of the confidential information would also impair Northern's future bargaining position and thus its ability

to obtain the maximum possible contribution to fixed costs. Additionally, disclosure of the information would provide Northern's competitors all of the information they would need to undercut Northern in its customer-specific proposals.

4. In determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission employs the analysis articulated in *Lambert v. Belknap County Convention*, 157 N.H. 375(2008) and *Lamy v. N.H. Public Utilities Commission*, 152 N.H. 106 (2005). Under this analysis the Commission first determines "whether the information is confidential, commercial or financial information, 'and whether disclosure would constitute an invasion of privacy.'" *Unitil Energy Systems, Inc.*, DE 10-055, Order No. 25,214 (April 26, 2011), p. 35. If a privacy interest is implicated, the Commission then balances the asserted private confidential, commercial or financial interest against the public's interest in disclosure in order to determine if disclosure would inform the public of the government's conduct. *Id.* If it does not, then "disclosure is not warranted." *Id.*

5. For the reasons presented above, all of the information is clearly confidential, commercial or financial, and disclosure of it would pose harm and constitute an invasion of privacy. Because such disclosure will not inform the public of the government's conduct, the information should be protected.

6. The Commission has previously issued protective orders for very similar confidential information submitted with the original special contract between Northern and National Gypsum in Docket DG 99-123, and the Second Amendment of Agreement. *See Re Northern Utilities, Inc.*, 84 NH PUC 529 (October 5, 1999) and *Re Northern Utilities, Inc.*, DG 09-201, Order No. 25, 047 (November 25, 2009).

7. Northern requests that the Commission issue an order protecting the above-described information from public disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form. Northern requests that the protective order also extend to any discovery, testimony, argument or briefing relative to the confidential information.

WHEREFORE, Northern respectfully requests that this honorable Commission:

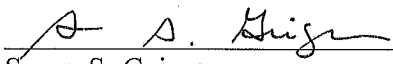
A. Issue an appropriate order that exempts from public disclosure and otherwise protects the confidentiality of the information designated confidential contained in the documents submitted herewith;

B. Grant such additional relief as it deems appropriate.

Respectfully submitted,  
NORTHERN UTILITIES, INC.

By its attorneys,  
Orr & Reno, P.A.

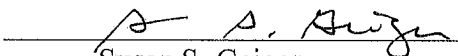
Date: October 18, 2011

  
\_\_\_\_\_  
Susan S. Geiger

One Eagle Square  
P.O. Box 3550  
Concord, NH 03302-3550  
603.223.9154  
[sgeiger@orr-reno.com](mailto:sgeiger@orr-reno.com)

Certificate of Service

I hereby certify that on this 18<sup>th</sup> day of October, 2011, a copy of the foregoing Motion was served electronically upon the Office of Consumer Advocate.

  
\_\_\_\_\_  
Susan S. Geiger