

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION
XOOM ENERGY NEW HAMPSHIRE, LLC

CEPS Annual Sales Report

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

I INTRODUCTION

NOW COMES XOOM Energy New Hampshire, LLC (“XOOM Energy New Hampshire”), 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 provides confidential treatment to certain financial information in the CEPS Annual Sales Report which is being provided as a required part of XOOM Energy New Hampshire’s registration as a Competitive Electric Supplier in the State of New Hampshire. This protective order is requested to be in place on a permanent basis to protect the confidential and proprietary financial information of XOOM Energy New Hampshire, which is a privately held company organized under the laws of the State of New Hampshire.

In support of its request for a protective order, XOOM Energy New Hampshire states as follows:

II LEGAL STANDARD

The Commission shall issue a protective order providing confidential treatment of certain governmental records, including, for example:

“Records pertaining to internal personnel practices; *confidential, commercial, or financial information*; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing

in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.”

See RSA 91-A:5(IV). Moreover, RSA-38-2-2(4)(B), specifically states that the following shall not be deemed part of public records:

“Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.”

The Commission has frequently protected sensitive market information, and has determined that confidential, commercial or financial information can be protected. In making this determination, the Commission uses the legal standard 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.*

III THE MATERIALS CONTAIN CONFIDENTIAL, COMMERCIAL OR FINANCIAL INFORMATION AND WARRANT PROTECTION FROM DISCLOSURE

The CEPS Annual Sales Report constitutes confidential, commercial or financial information that should be protected from public disclosure. XOOM Energy New Hampshire is a privately held company and, as such, the financial information in the CEPS Annual Sales Report its terms should not be released to the public. Moreover, protecting such financial information from the public allows XOOM Energy New Hampshire to provide a cost-effective service that is competitive in the retail energy market in the State of New Hampshire. The disclosure of this information to the public would give an undue advantage to competitors of XOOM Energy New Hampshire; conversely, the protection of this information will help

safeguard the competitiveness of the retail energy market. This kind of completely sensitive information is routinely protected from public disclosure pursuant to RSA 91-A:5,IV. Because such disclosure will not inform the public of the government's conduct, the information should be protected.

III CONCLUSION

For the reasons set forth above, XOOM Energy New Hampshire requests that the Commission protect from the public disclosure the CEPS Annual Sales Report as it contains confidential, commercial or financial information regarding the business operations of XOOM Energy New Hampshire, which is being filed in connection with XOOM Energy New Hampshire's registration as a Competitive Electric Supplier.

Respectfully submitted,



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