

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

**DOCKET NO. DG 19-116**

**Petition of Northern Utilities, Inc. for Approval of  
Precedent Agreements for Westbrook Xpress Phase III Project**

**Motion for Protective Order and  
Confidential Treatment Regarding Discovery Responses and Settlement Agreement**

NOW COMES Northern Utilities, Inc. ("Northern" or "the Company") and, pursuant to RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08, respectfully moves the New Hampshire Public Utilities Commission (the "Commission") to issue a protective order according confidential treatment to certain information described below and submitted herewith. Specifically, Northern requests that the Commission issue an order extending the protective treatment previously granted to confidential information in the Company's initial filing to certain confidential and / or proprietary commercial information submitted in the course of discovery in this matter, as well as the confidential attachment to the Settlement Agreement among the parties. Northern has conferred with counsel for the Commission Staff and the Office of the Consumer Advocate, who do not object to the relief requested in this motion.

In support of this Motion, Northern states as follows:

1. In connection with its initial filing in this case, Northern submitted a Motion for Confidential Treatment seeking protective treatment of certain commercial terms of the precedent agreements at issue in this case, as well as descriptions of and discussion of such terms in the prepared testimony of the Company's witness. Northern's motion further requested that such treatment be extended "to any discovery, testimony, argument or briefing relative to the

confidential information.” DG 19-116, Motion for Protective Treatment at 4. No party objected to the Company’s motion, which the Commission granted at a prehearing conference on August 6, 2019. DG 19-116, Transcript at 4 (Aug. 6, 2019).

2. During the discovery phase of the above-captioned docket, the Company submitted confidential information in connection with the following data request responses: Staff 1-1; Staff 1-2; Staff 1-3; Staff 2-2; Staff 2-5; Staff 2-6; Staff 2-9; Staff 4-1; Staff 4-2; and Staff 4-3. When submitting these responses, the Company indicated that it a good faith basis for seeking confidential treatment of the confidential materials pursuant to Puc 203.08 and intended to submit a motion for confidential treatment regarding the documents at or before the commencement of the hearing in this docket.

3. The type of confidential information that is included in the above-referenced data requests is already subject to Protective Orders in a concurrently pending Maine Public Utilities docket, 2019-00101. ME PUC 2019-00101, Protective Orders 1 & 2 (May 13, 2019).

4. The Commission held a hearing on a Settlement Agreement submitted by the Parties to this Docket on October 8, 2019. At the time of the hearing, the Company had not submitted a motion for confidential treatment in connection with the above-referenced data request responses. The majority of the confidential information contained in the Company’s responses pertain to the commercial terms of the precedent agreements, to which the Commission has already granted protective treatment. Nevertheless, the Company requests that the Commission waive the requirement that a motion be submitted at or before the hearing pursuant to Puc 201.05, accept this post-hearing motion, and extend the confidential treatment granted in connection with the Company’s initial filing to confidential portions of discovery submitted in this matter, as well as the confidential portions of the attachment to the Settlement

Agreement.

5. Granting the waiver serves the public interest in that the purpose of the rule – delineating and maintaining the appropriate balance between confidential commercial information and publicly available information - is satisfied by allowing the motion. The waiver will not disrupt the orderly and efficient resolution of matters before the Commission.

6. The Company specifically requests that confidential treatment be extended to information submitted in connection with the following data requests:

- a. Staff 1-1, which requests “all Tables and Graphs in live digital format.” Attachments to the Company’s response includes excel versions of tables and graphs used by the Company in its initial petition. These “live” versions contain models and formulae that are confidential and proprietary to the Company.
- b. Staff 1-2 requests copies of “all data request responses the Company filed in the corresponding Maine docket,” 2019-00101. The Company provided all such responses, several of which contain confidential commercial information related to the underlying Precedent Agreements in this matter, descriptions of the Company’s analytical and evaluative processes and supply portfolio, and other proprietary and confidential information, and are subject to Protective Orders in 2019-00101. ME PUC 2019-00101, Protective Orders 1 & 2 (May 13, 2019).
- c. Staff 1-3 requests information regarding gas supply options. The Company’s response includes confidential descriptions of the Company’s analytical and evaluative processes and supply portfolio.
- d. Staff 2-2 requests information regarding the regulatory approval processes for the proposed WXP capacity projects. The Company’s response includes information regarding the timing of the respective approval processes for the three pipeline companies<sup>1</sup> with which the Company has entered into Precedent Agreements. The Company understands this information to be confidential commercial information that is proprietary to the pipeline companies.
- e. Staff 2-5 requests information regarding “decision points” and the decision-making process that the Company will use to determine whether to proceed with the Precedent Agreements. The Company’s response includes descriptions of confidential commercial terms in the Precedent Agreements, as well as confidential descriptions of the Company’s internal decision-making process relative to those confidential commercial terms.

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<sup>1</sup> Portland Natural Gas Transmission System (“PNGTS”), TransCanada Pipelines Limited (“TransCanada”) and Enbridge Gas, Inc. (“Enbridge”).

- f. Staff 2-6 requests information regarding cancellation fees in prior agreements that are similar to the ones now before the Commission. The Company's response includes reference to a confidential contractual term in a February 2015 precedent agreement with TransCanada.
- g. Staff 2-9 requests information regarding the costs that Northern will have paid or will be required to pay in the event that it does not receive satisfactory regulatory approvals. The Company's response includes reference to confidential contractual terms in the Precedent Agreements.
- h. Staff 4-1 requests annual cost estimates, including annual demand costs, for each Precedent Agreement during the contract period. The Company's confidential Attachment to Staff 4-1 provides the requested data, which constitutes confidential and proprietary pricing information.
- i. Staff 4-2 requests a timeline of "decision points" and related financial consequences for each of the Precedent Agreements. The Company's response to Staff 4-2, as well as the Attachment to Staff 4-2, include descriptions of confidential commercial terms in the Precedent Agreements (for which the Commission has already granted confidential treatment), as well as confidential descriptions of the Company's internal decision-making process relative to those confidential commercial terms. Attachment staff 4-2 is also included as an Attachment to the Settlement Agreement submitted to the Commission for approval in the above-captioned matter.
- j. Staff 4-3 requests a "decision tree" for each "decision point" that includes a best estimate of the probability of each outcome, resource plans, and costs. The Company's response includes descriptions of confidential commercial terms in the Precedent Agreements (for which the Commission has already granted confidential treatment), as well as confidential descriptions of the Company's internal decision-making process relative to those confidential commercial terms.

7. 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 at 35 (April 26, 2011) (citing *Union Leader Corp. v. New Hampshire*

*Housing Finance Authority*, 142 N.H. 540, 552 (1997) (emphasis in original); *see also Re Northern Utilities, Inc.* DG 12-031, Order No. 25,330 at 5 (February 6, 2012) (“In determining whether confidential, commercial, or financial information should be deemed confidential, we first consider whether there is privacy interest that would be invaded by the disclosure.”). When a privacy interest is at stake, the public’s interest in disclosure is assessed. *Id.* (citing *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009)). 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.*

8. Applying this three part test, the first inquiry is whether there is a privacy interest in the confidential and / or proprietary commercial information included in the above-referenced data request responses and attachments for which the Company seeks protective treatment. As Northern noted in its initial motion for protective treatment in this matter, the Company has an expectation of privacy in key terms such as pricing and related commercial provisions in supply agreements based on existing Commission practice. For example, in *Liberty Utilities*, Docket DG 14-380, in which the Commission considered a precedent agreement between Liberty Utilities and the Tennessee Gas Pipeline Company, L.L.C., the Commission held that the Company had a reasonable expectation of privacy in similar terms contained in that agreement. *See* February 19, 2015 Secretarial Letter in DG 14-380. Commission rules also recognize the need to protect gas supply contracts through their explicit acknowledgment that “pricing and delivery-related special terms of supply agreements” provided in cost of gas proceedings are accorded confidential treatment. *See* Puc 201.06(a)(26)(b). Based on the Commission’s established treatment of pricing and delivery-related special terms in similar dockets as well as

cost of gas proceedings, the Company has a reasonable expectation of privacy that the same type of information will be accorded confidential treatment here.

9. The Company's responses to Staff 1-2, 2-5, 2-6, 2-9, 4-1, 4-2, and 4-3 contain descriptions and / or analysis of such terms, as well as the Company's decision-making process with respect to events occurring under such terms, and merit the same confidential treatment already granted by the Commission in this docket.

10. Several of the Company's responses also contain proprietary and confidential financial and commercial information, including information regarding the Company's internal commercial decision-making processes and information regarding the Company's analytical and evaluative processes and supply portfolio. Several of the responses also include information that is confidential and proprietary to Northern's pipeline counterparties, and is subject to an expectation of confidentiality. Responses and / or attachments to Staff 1-1, 1-2, 1-3, 2-2, 2-5, 4-2, and 4-3 contain such information.

11. Exhibit A to the Settlement Agreement in this matter is the same document as the Company's Attachment to Staff 4-2. As such, the Company requests the same confidential treatment for Exhibit A to the Settlement Agreement that it requests for the Attachment to Staff 4-2.

12. The next step in the analysis is to consider whether there is a public interest in disclosure of the information, including whether release of the information lends any insight into the workings of government as it relates to this case. Here, public disclosure of the capacity supply pricing and delivery-related terms, or Northern's descriptions, analysis, and evaluation of such terms as reflected in the above-referenced data requests, would not materially advance the public's understanding of the Commission's analysis in this proceeding. The Company

negotiated the pricing and delivery-related terms, and, thus their release, either directly or indirectly through discovery responses, does not shed any light on the Commission's work but rather the Company's negotiating power. Similarly, information that is confidential to Northern - the Company's internal decision-making processes regarding contractual commitments, descriptions of the Company's analytical and evaluative processes and supply portfolio, confidential work product inherent in "live" excel files, and commercial information provided to Northern by counterparties with an expectation of privacy - is not probative of the Commission's work but rather the Company's confidential commercial analyses and strategies.

13. The public's interest is in understanding the Commission's review of the proposed contracts and why the contracts are in the public interest. The Company's expectation is that the work that the Commission undertakes to review the transaction at issue in this case will be publicly available and as a result, the Commission's work will be available for public scrutiny. Even if one were to conclude that there is a public interest in disclosure of the pricing, delivery-related and financial terms of the WXP PAs, or the Company's internal confidential information and analyses, the harm that could occur as a result of that disclosure is well outweighed by the privacy interests at stake. It would be highly disadvantageous to the Company's negotiating position if any future suppliers were aware of the pricing and other key terms upon which the Company was willing to conduct business, or of its analytical and evaluative processes. Disclosure would impair the respective bargaining positions of Northern's counterparties, who entered the precedent agreements with an expectation of privacy and confidentiality relative to certain commercial terms. As a result, Northern's ability to negotiate favorable terms with such counterparties, or similarly situated entities, may be harmed. The harm caused by disclosure would ultimately accrue to the Company's customers, since the cost

associated with any capacity arrangement are charged to customers through the Company's cost of gas charge. Thus, the Company submits that there is no public interest in disclosing these key contract terms or the other confidential information described herein.

14. The confidential information described above has been made available to the Commission Staff and the Office of the Consumer Advocate notwithstanding any Commission order granting confidential treatment. Moreover, the Company has only redacted so much information as is necessary to protect its privacy interests and those of its contractual counterparties.

15. Northern has conferred with counsel for the Commission Staff and the Office of the Consumer Advocate, who do not object to the relief requested in this motion.

16. Northern requests that the Commission issue an order protecting the above-described information from disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form.

WHEREFORE, Northern respectfully requests that the Commission:

- A. Issue an appropriate order that exempts from public disclosure and otherwise protects the confidentiality of the information designated confidential in the documents referenced above;
- B. Waive the requirement of Puc 205.01 that a motion for confidential treatment be filed at or before the hearing in this matter and accept this motion on a post-hearing basis; and
- C. Grant such additional relief as is just and appropriate.

Dated at Hampton, NH on this 30<sup>th</sup> day of October, 2019.

Respectfully submitted,

NORTHERN UTILITIES, INC.

By Its Attorney,



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