

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 11-040

NATIONAL GRID USA ET AL.

Motions for Protective Order and Confidential Treatment

Order Granting Motions

ORDER NO. 25,400

August 21, 2012

I. PROCEDURAL BACKGROUND

On March 4, 2011, National Grid USA, National Grid NE Holdings 2 LLC, Granite State Electric Company d/b/a National Grid (Granite State), EnergyNorth Natural Gas, Inc. d/b/a National Grid NH (EnergyNorth), Liberty Energy Utilities Co. (Liberty Canada¹), and Liberty Energy Utilities (New Hampshire) Corp. (Liberty NH) filed with the Commission a joint petition for authority to transfer ownership of Granite State and EnergyNorth to Liberty NH and for related approvals.

On March 8, 2011, the Commission opened this docketed proceeding to assess the merits of the petition. A settlement agreement was reached by settling parties and Staff and filed on April 9, 2012. In *National Grid USA et al.*, Order No. 25,370 (May 30, 2012), the Commission approved the settlement agreement.

On June 26, 2012, National Grid filed a motion for protective order and confidential treatment pursuant to Puc 203.08 regarding certain provisions of an escrow agreement negotiated with Bank of America pursuant to the settlement agreement. On July 2, 2012, Liberty NH filed a

¹ On June 1, 2012, Liberty Energy Utilities Co. announced that it had changed its corporate name to Liberty Utilities Co. The July 2, 2012 motion references Liberty Utilities (Canada) Corporation, the parent company of Liberty Utilities Co., the parent of Liberty NH.

similar motion concerning information included in a security assessment conducted by PricewaterhouseCoopers LLP (PwC) on behalf of Liberty Utilities and a written management response to the assessment results.

II. MOTIONS FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

A. National Grid's Motion

National Grid requests confidential treatment pursuant to RSA 91-A:5, IV of certain portions of the agreement it has concluded with Bank of America regarding the terms of an escrow arrangement entered into for purposes of complying with the settlement approved in DG 11-040. Specifically, National Grid seeks protection of information contained in Article 3 of the escrow agreement, entitled "Disbursements from the Escrow Account," which details both the entity authorized to make disbursements from the account and the method by which such disbursements shall be requested and made.

National Grid argues that disclosure of the information would create a risk of fraud to both National Grid and Bank of America. According to National Grid, a person with knowledge of the disbursement procedures and the persons authorized to make the disbursements, together with the sample document (Schedule 3.1) attached to the Agreement, might be able to misappropriate funds by fraudulently purporting to authorize transfers out of the escrow account, given the sophisticated nature of home printing equipment and supplies to produce seemingly official looking documents, and the extensive use of the Internet and email as a means of inducing parties to convey funds or other information without proper authorization.

B. Liberty NH's Motion

Liberty NH has requested confidential treatment pursuant to the confidential, commercial or financial information exemption of RSA 91-A:5, IV for certain information contained in the

Security Assessment Report prepared by PwC and Liberty Utilities' Management Response to that report.

In its Motion, Liberty NH seeks confidential treatment of information contained in the Security Assessment Report and Management Response that addresses instances of non-compliance and descriptions of actions taken by management to remediate any identified conditions. The report summarizes the results of PwC's analysis and identifies a number of additional measures Liberty Utilities could take to improve its network security. After reviewing the Report, Liberty Utilities management developed an action plan to address the Report findings and recommendations. That action plan is summarized in the Management Response and describes the specific remediation activities Liberty Utilities will undertake as a result.

Liberty NH argues that it has a privacy interest in the confidential information based on its obligation to protect the company's information technology (IT) infrastructure and data, including customer data. Liberty NH further contends that disclosure of the information would not inform the public about the workings of the Commission, and that the information contained in both documents meets the requirements of the test used by the Commission to determine that confidential treatment is warranted. In support of its motion, Liberty NH argues that the Security Assessment Report and Management Response describe the characteristics of Liberty Utilities' IT infrastructure that might enable a malicious user to gain unauthorized access to its systems and data, and that complete disclosure would provide a road map for a malicious user attempting to obtain such unauthorized access.

III. COMMISSION ANALYSIS

New Hampshire's Right-to-Know Law, RSA 91-A, provides each citizen the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute

contains an exception, invoked here by the Joint Petitioners, for “confidential, commercial, or financial information.” RSA 91-A:5, IV. We have had numerous occasions to rule on motions for confidential treatment in the context of confidential, commercial, and financial information regarding utilities and their affiliates. *See e.g., EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,280 (October 25, 2011), *Northern Utilities, Inc.*, Order No. 25,330 (February 6, 2012); *Public Service Co. of New Hampshire*, Order No. 25,332 (February 6, 2012); and *National Grid USA et al.*, Order No. 25,370 (May 30, 2012).

Following the approach used in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) in determining whether the information identified by the movants should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public’s interest in disclosure is assessed. *Id.* at 383. 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.* We will analyze each category of information for which protective treatment is requested in turn.

Here, in sum, the movants argue that the information for which they seek protective treatment constitutes “confidential, commercial, or financial information” under RSA 91-A:5, IV, and that disclosure will not provide the public with information about the conduct or activities of the Commission or other parts of the New Hampshire State or local government.

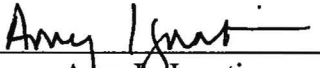
We are persuaded that the information provided by each movant constitutes competitively sensitive information that should not be disclosed. We also find that public disclosure of the information will not materially advance the public's understanding of the Commission's analysis in this proceeding and, moreover, could result in financial or competitive harm. We also agree that disclosure of the information regarding Liberty Utilities' security assessment as well as the specific disbursement mechanisms of the escrow agreement between National Grid and Bank of America could pose legitimate security risks.

We note that no party or person has objected to the confidential treatment requested or asserted that disclosure would inform the public about governmental activities. Accordingly, in balancing the interests of the companies in protecting their information with the public's interest in disclosure, we conclude that the information should not be disclosed and we grant the motions. To the extent that information for which protection is granted herein is released or made public by either movant at a later time, that information would no longer be subject to protective treatment. *See* Puc 203.08(l). Consistent with Puc 203.08(k), our grant of this motion is subject to our on-going authority, on our own motion, on the motion of Staff, or on the motion of any member of the public, to reconsider our determination.

Based upon the foregoing, it is hereby

ORDERED, that the motions for confidential treatment are granted as set forth above.


By order of the Public Utilities Commission of New Hampshire this twenty-first day of August, 2012.



Amy L. Ignatius
Chairman

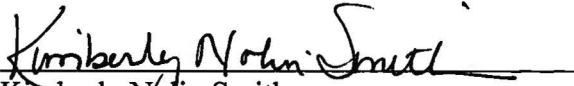


Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Kimberly Nolin Smith
Assistant Secretary