

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Re: EnergyNorth Natural Gas, Inc. d/b/a National Grid NH

Docket DG 10-017

**MOTION FOR REHEARING AND/OR RECONSIDERATION OF ORDER NO. 25,208**

EnergyNorth Natural Gas, Inc. d/b/a National Grid NH ("National Grid NH" or "the Company") respectfully requests that, pursuant to RSA 541:3, the Commission reconsider or conduct a rehearing regarding Commission Order No. 25,208 ("the Order") with regard to the Order's denial of the Company's request that data regarding the earnings per share performance for National Grid plc provided in response to Data Request Staff 3-55 be determined to be exempt from disclosure under the New Hampshire Right to Know Act, RSA 91-A. In support of its motion, National Grid NH states as follows:

1. RSA 541:3 provides that the Commission may grant a motion for rehearing if "good reason for the rehearing is stated in the motion." *See Connecticut Valley Electric Co. v. Public Service Co. of New Hampshire*, DE 03-030, Order No. 24,189 dated Jul. 3, 2003, at 2. The purpose of a rehearing is to provide consideration of matters that were either overlooked or "mistakenly conceived" in the original decision. *Dumais v. State*, 118 N.H. 309 (1978); *Investigation as to Whether Certain Calls are Local*, DT 00-223/00-054, Order No. 24,218 dated Oct. 17, 2003, at 8 ("Motions for rehearing direct attention to matters 'overlooked or mistakenly conceived' in the original decision and require an examination of the record already before the fact finder.")

2. During the discovery phase of this proceeding, the Commission staff propounded a data request that sought background information regarding incentive compensation paid to

various employees who provided service to the Company. In particular, Staff 3-55 requested that the Company provide, among other things, “the company-wide earnings per share target and earning per share performance for the test year.” The test year in this case covered a time period that included two fiscal years for the Company, and therefore the data requested related to two different fiscal years. The Company provided a response to the data request and sought protective treatment, pursuant to N.H. Code of Admin. Rule 203.08, of both the earnings per share target and earnings per share performance data on the basis that the information is exempt from disclosure pursuant to RSA 91-A:5, IV because it constitutes “confidential, commercial, or financial information.” Motion at ¶ 67.

3. In the Order, issued March 23, 2011, the Commission ruled that only the earnings per share target data deserved protection from public disclosure. With regard to the earnings per share performance data, the Commission stated that it was “less clear what privacy interest exists relative to the actual earnings per share, which we understand is information available to the general investing public.” Order at 17.

4. It does not appear that there was any specific basis in the record for the Commission’s stated understanding that the earnings per share performance data used in the incentive compensation plan was available to the public, but rather it appears that the Commission may have inferred this from the fact that the Company’s motion referred to the data as “actual earnings per share performance” data. See Motion at ¶ 65.

5. Based on its belief that the actual earnings per share performance data used in the incentive compensation plan was information that was available to the general investing public, the Commission went on to state that “there is no explanation of any harm that could result from the public being aware of information that is already public in another forum. Accordingly, we

conclude that the information in Staff 3-55 relating to...actual earnings per share is not [entitled to confidential treatment].” Order at 17.

6. While the Commission was correct that National Grid plc, like other publicly traded companies in the United Kingdom and the United States, does release actual earnings data to the general investing public, the actual earnings per share data used for purposes of the incentive compensation plan and included in response to Staff 3-55 is not the same data as the information that is publicly released. The publicly disclosed data provided by National Grid plc reflects the requirements of applicable accounting standards under the International Financial Reporting Standards (the international equivalent of Generally Applicable Accounting Standards to which U.S.-based companies are subject). The data used for purposes of the incentive compensation plan, on the other hand, includes adjustments that differ from those standards, and results in earnings data that is not available to or readily understandable by the investing public. These adjustments reflect items that would not be appropriate for purposes of the plan and relate to matters such as exceptional items (e.g., significant restructurings, write-downs or impairments of non-current assets), remeasurements, currency fluctuations, and the like.

7. The Company’s motion noted that both the earnings per share target and actual amounts provided in the Company’s response to Staff 3-55 are “highly confidential, commercially sensitive information relative to National Grid’s incentive pay program. This information is not publicly disclosed, and is only internally disclosed to a very select group of National Grid personnel.” Motion at ¶ 66. The Company did not, however, anticipate that the Commission would assume that the actual earnings used for purposes of the plan were the same as the information that is released publicly. In retrospect, that assumption by the Commission is understandable, and the Company now seeks to address it with the clarification provided above.

8. Based on the foregoing clarification, the Company respectfully requests that the Commission reconsider its Order No. 25,208 or, in the alternative, grant the Company a rehearing regarding this issue.

WHEREFORE, National Grid NH respectfully requests that the Commission:

- A. Grant this Motion for Motion for Rehearing and/or Reconsideration; and
- B. Determine that the data regarding the earnings per share performance data contained in the response to Staff 3-55 be exempt from public disclosure.

Respectfully submitted,

EnergyNorth Natural Gas, Inc.  
d/b/a National Grid NH

By Its Attorneys

MCLANE, GRAF, RAULERSON &  
MIDDLETON, P.A.

Dated: April 22, 2011

By:



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**Verification of Motion**

I, Frank Lombardo, Director of Gas Revenue Requirements for National Grid USA, being first duly sworn, hereby depose and say that I have read the foregoing Motion for Rehearing and/or Reconsideration, and the facts alleged therein are true to the best of my knowledge and belief.

Dated: April 22, 2011

  
Frank Lombardo

STATE OF NEW YORK  
COUNTY OF KINGS

Sworn to and subscribed before me this 22<sup>nd</sup> day of April 2011.

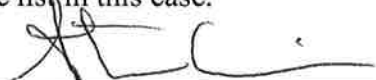
JACLYN SANTANGELO  
Notary Public, State of New York  
No. 01SA6202113  
Qualified in Kings County  
Commission Expires March 9, 2013

  
Notary Public

My Commission Expires: 3/9/13

### **Certificate of Service**

I hereby certify that a copy of this Motion for Rehearing and/or Reconsideration has been electronically served and mailed to the service list in this case.

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Steven V. Camerino