

**THE STATE OF NEW HAMPSHIRE**

**PUBLIC UTILITIES COMMISSION**

**DE 10-188**

**ELECTRIC AND GAS UTILITIES**

**2011-2012 CORE Electric Energy Efficiency Programs and Natural Gas Energy Efficiency Programs**

**NATIONAL GRID NH'S MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT REGARDING RESPONSE TO OCA 2-1(b)**

EnergyNorth Natural Gas, Inc. d/b/a National Grid NH ("National Grid NH" or the "Company") hereby moves pursuant to N.H. Code of Administrative Rules Puc 203.08 for confidential treatment by the Commission with respect to certain provisions of the Services Level Agreement between National Grid NH and Conservation Services Group, Inc. ("CSG"). In support of its motion, National Grid NH states as follows:

1. On September 22, 2010, OCA submitted its Second Set of Data Requests to National Grid NH in this proceeding. OCA 2-1 requested "...a copy of the contract between GRID NH and the IC for the 2011 and 2012 periods. Please include details on compensation methods and amounts. Are there any incentive compensation mechanism in the contract?" In its response to this request, National Grid NH produced a copy of the contract to the OCA and Staff but provided that it had a good faith basis for seeking confidential treatment of the contract. A copy of the Company's response is attached hereto as Exhibit 1.

2. The Company submits this Motion for Protective Order and Confidential Treatment for this contract with CSG which was entered into on September 9, 2010 in which CSG committed to provide, among other things, services and material for energy efficiency work on an as-needed basis throughout the State of New Hampshire for the period September 9, 2010 through March 31, 2011 with an option to extend through June 30, 2011. A copy of the redacted contract is attached

to this Motion as Exhibit B, and confidential copies of the contract are being provided to the Commission in a sealed envelope along with this Motion.

3. The terms and conditions and price schedules attached to the Services Level Agreement contain pricing information, responses to requests for proposals that constitute confidential information and contractual terms and conditions and, therefore, are exempt from public disclosure under the New Hampshire Right to Know Act, RSA 91-A.

4. National Grid NH seeks confidential treatment of the certain terms in the contract pursuant to RSA § 91-A and Puc § 203.08 because they contain confidential, commercial and financial information of the Company which it does not disclose to the public. Specifically, the Company seeks to protect from public disclosure its standard terms and conditions for contract and the pricing terms of the contract. In *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005), the New Hampshire Supreme Court described a three-step analysis to determine whether information should be protected from disclosure under the Right to Know Law.

First, we evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure. Next, we assess the public's interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government. Finally, we balance the public interest in disclosure against the government interest in nondisclosure and the individual's privacy interest in nondisclosure.

*Id.* at 109. The PUC applies this test. See e.g. *Unitil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009).

5. National Grid NH submits that there is a significant privacy issue at stake with respect to the redacted terms of the contract. The Company does not make the terms and

conditions on which it is willing to do business public. Further, the pricing information attached to the agreement contains competitive energy efficiency labor and materials pricing and contract terms which are commercially sensitive, the disclosure of which could be harmful to the competitive position of the contractor, CSG. Disclosure could chill the willingness of CSG to participate in providing energy efficiency services in New Hampshire in the future for National Grid NH or otherwise. If National Grid NH were to disclose this information, it could harm its competitive position in obtaining these and similar services in the future, which ultimately could harm its customers. *See Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 554 (1997).

6. Further, the purpose of this proceeding is to evaluate the gas and electric utilities' proposals for various energy efficiency services for the 2011-2012 time period. It is not to evaluate the particular terms of contracts to provide those services. As such, the public does not have an interest in having access to the Company's confidential business and financial information regarding the terms and conditions under which it obtains contractors to provide these services. Accordingly, National Grid NH submits its legitimate privacy interest in its pro forma outweighs any interest the public may have in disclosure.

7. The Commission has the authority to protect the information described above pursuant to N.H. Code of Admin. Rules Puc 203.08, which provides in pertinent part that "[t]he Commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law based upon the information submitted pursuant to [Puc 203.08(b)]."

8. For the reasons stated above, the Services Level Agreement and its attachments qualify for confidential treatment under state law and Commission rules and, as such, should be protected from disclosure. National Grid NH therefore requests that the Commission issue a protective order granting this Motion and protecting from public disclosure the confidential commercial information described above.

WHEREFORE, National Grid NH respectfully requests that the Commission:

- A. Issue an order protecting the information described above; and
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

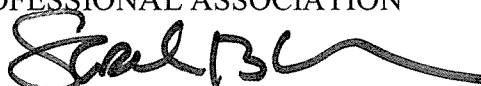
ENERGYNORTH NATURAL GAS, INC.  
D/B/A NATIONAL GRID NH

By its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,  
PROFESSIONAL ASSOCIATION

Date: December 15, 2010

By:

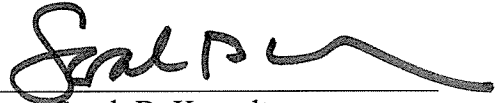


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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this motion has been forwarded to all parties on the service list in this docket.

Dated: December 15, 2010

A handwritten signature in dark ink, appearing to read 'Sarah B. Knowlton', written over a horizontal line.

Sarah B. Knowlton