

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. D/B/A LIBERTY
UTILITIES

Re: Cast Iron/Bare Steel Replacement Program Results

Docket No. DG 15-104

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
REGARDING RESPONSE TO ATTACHMENT STAFF TECH-1.b**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or the “Company”) hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant protective treatment to certain confidential information contained in the Company’s response to data request Staff Tech-1.b. In support of this motion, the Company states as follows:

1. As part of discovery in this proceeding, Commission Staff submitted a data request (Staff Tech-1) to the Company seeking information on the Company’s new five year mains and service construction contracts, including “a matrix summarizing all bidder responses to the critical points in the RFP that Liberty used to evaluate and award the contracts.” The Company responded by providing an attachment to the data response with information summarizing the bidders’ responses, including on pricing elements proposed by the contractors. The Company now seeks protective treatment of that price information which is competitive, commercial financial information which neither the Company nor the bidders have disclosed publicly and was submitted in confidence as part of the RFP process.

2. RSA 91-A:5, IV exempts from public disclosure records that constitute confidential, commercial, or financial information. Based on *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), the Commission applies a three-step analysis to determine whether information should be protected from public disclosure. *See, e.g. Public Service Company of New Hampshire*, Order No. 25,313 at 11-12 (December 30, 2011). The first step is to determine if there is a privacy interest at stake that would be invaded by the disclosure. If such an interest is at stake, the second step is to determine if there is a public interest in disclosure. The Commission has held that disclosure that informs the public of the conduct and activities of its government is in the public interest; otherwise, public disclosure is not warranted. *Public Service Company of New Hampshire*, Order 25,167 at 3 (November 9, 2010). If both of these steps are met, the Commission balances those interests in order to weigh the importance of keeping the record public with the harm from disclosure of the material for which protection is requested. *Id.* at 3-4.

3. Applying this three part test, the first inquiry is whether there is a privacy interest that would be implicated by the release of the information. The bid price information clearly constitutes confidential commercial information of the potential contractors and in which they have a privacy interest based on their inherent desire to maintain a competitive position in the marketplace. The Commission has previously recognized a valid privacy interest in bid responses. *See e.g. Unitil Energy Systems, Inc.*, DE 11-028, Order 25,303 (December 15, 2011); *Granite State Electric Company*, Docket No. DE 11-016, Order No. 25,270 at 5 (September 12, 2011); and *Public Service Company of New Hampshire*, Docket Nos. DE 08-103 and DE 11-250, Order No. 25,332 at 17 (February 6, 2012).

4. 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 bidders' proposed prices would not provide any insight into the workings of the Commission or its review of the cast iron/bare steel investments that are the focus of this docket. Even if one were to conclude that there is a public interest in disclosure of the pricing proposals of the bidders, the harm that would occur as a result of that disclosure would be significant. Vendors might not be willing to bid on work for the Company if their otherwise confidential pricing information would be released to the public. This in turn would have an adverse effect on the Company's ability to attract a robust pool of bidders, which in turn could result in less competitive bid prices for work. This harm would ultimately accrue to the Company's customers, since the cost associated with this contract construction labor is ultimately charged to customers through the Company's rates. The Company submits that there is no public interest in disclosing these key contract terms.

5. For these reasons, EnergyNorth requests that the Commission issue a protective order preventing the public disclosure of the bidders' proposed pricing provided in response to Staff Tech-1.b.

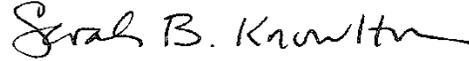
WHEREFORE, EnergyNorth respectfully requests that the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

LIBERTY UTILITIES (ENERGYNORTH NATURAL
GAS) CORP.
D/B/A LIBERTY UTILITIES

By its Attorney,



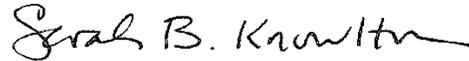
Date: June 1, 2015

By: _____

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Certificate of Service

I hereby certify that on June 1, 2015, a copy of this Motion has been forwarded to the service list in this docket.



Sarah B. Knowlton