

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. D/B/A LIBERTY
UTILITIES
Docket No. DG 14-155

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
REGARDING OCA DATA REQUEST 1-6

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty” or the “Company”), in accordance with Puc 203.08, hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant protective treatment to certain confidential information contained in response to Office of Consumer Advocate (“OCA”) data request 1-6 in the above captioned docket¹. In support of this motion, the Company states as follows:

1. On July 17, 2014, the OCA issued data request 1-6 to the Company in which it sought the following:

Reference Attachment 1, p. 17 (Bates p. 26), §5.8. Please provide a complete copy of each report, memorandum, or other document prepared as part of ENGI’s due diligence investigation of NHGC’s property, plant, equipment and operations.

The Company responded by producing a copy of the attached document to Staff and OCA, which contains summary information regarding the Company’s due diligence investigation of New Hampshire Gas Corporation (“NH Gas”). The Company now seeks protective treatment of the information within the attached document that is marked confidential because the Company’s

¹ The Company responded to OCA Data Requests 1-22 and 2-18 and indicated that it would be seeking confidential treatment of those responses. The Company now waives any request for confidential treatment as to those responses.

privacy interest in being able to evaluate business opportunities in an open and frank manner outweighs any public interest in the information.

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 or not 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 the analysis under *Lambert v. Belknap County Convention*, the Company has a privacy interest in the information in Attachment OCA 1-6 because it reflects the Company and its parent's analysis of various issues relating to the potential purchase of NH Gas prior to the execution of the Stock Purchase Agreement. Potential acquirers like the Company have an interest in full and frank internal consideration of potential business opportunities and have a reasonable expectation that those discussions are confidential. In this case, the information for which confidential treatment is sought was developed solely for the potential purchase of NH Gas. The Company and its parent have a reasonable expectation of privacy in

this information because analyses of business opportunities are typically conducted in confidence, and can be some of the most confidential undertakings of a company.

4. The second prong of the *Lambert* analysis requires consideration of whether release of the information would provide the public with insight into the Commission's operations. Release of Algonquin's internal analysis of a potential business acquisition does not provide the public with information about the conduct of the Commission's work, and as a result, the second prong of the *Lambert* test for disclosure is not met. However, if the Commission were to determine that it should consider the third prong of *Lambert*, there is a stronger interest in protecting the disclosure of this due diligence information than the public's interest in the information. If companies were required to disclose due diligence analyses, it would create a disincentive for the sale and purchase of businesses or business assets. Potential buyers need to be able to conduct confidential evaluations of potential business opportunities, outside of the eye of the seller and the public at large, so those evaluations are open and frank. If those evaluations were provided to the public, the buyer's acquisition strategy could be revealed, which could cause irreparable harm. Further, the information that is relevant to the public is the transaction that is proposed, not the factors leading up to negotiation of the transaction. The Commission has previously ruled that negotiations leading up to the execution of a contract are not discoverable, because that information is not admissible. *See Re Public Service Company of New Hampshire, DE 10-195*, Order No. 25,174 at 18 (November 24, 2010). Rather, it is the results of the negotiation (i.e. the transaction itself) that is the proper scope of inquiry. *Id.*

5. For these reasons, Liberty requests that the Commission issue a protective order preventing the public disclosure of the confidential information in the response to OCA 1-6.

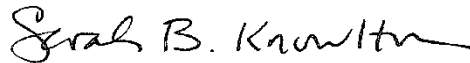
WHEREFORE, Liberty respectfully requests that the Commission:

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

Respectfully submitted,

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

By its Attorney,

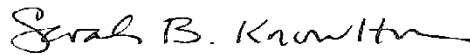


Date: October 27, 2014

By: _____
Sarah B. Knowlton
Assistant General Counsel
Liberty Energy Utilities (New Hampshire) Corp.
15 Buttrick Road
Londonderry, NH 03053
Telephone (603) 216-3631
sarah.knowlton@libertyutilites.com

Certificate of Service

I hereby certify that on October 27, 2014, a copy of this Motion has been forwarded to the Consumer Advocate.



Sarah B. Knowlton