

State of New Hampshire
Public Utilities Commission

Docket No. DG 16-XXX

Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities

**Petition for Expansion of Franchise to the
Town of Hanover and City of Lebanon, New Hampshire**

Motion for Protective Order and Confidential Treatment

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty Utilities” or the “Company”), through counsel, respectfully moves the New Hampshire Public Utilities Commission pursuant to Puc 203.08 for a protective order providing for the confidential treatment of one reference in Attachment WJC-3, of certain portions of Attachment WJC-8, the *Hanover Lebanon Expansion Plan*, and of 14 appendices to the Expansion Plan.

In support of this motion, Liberty Utilities represents as follows:

Introduction.

1. Liberty Utilities filed the petition in this docket requesting Commission approval to provide utility natural gas service in Hanover and Lebanon. Relevant to this motion, the supporting testimony of William J. Clark has two attachments that contain a number of references, tables, and appendices that contain confidential information.

2. Confidential Attachment WJC-3 is Liberty Utilities’ January 2014 response to Dartmouth College’s “Request for Indicative Bids to Provide Compressed Natural Gas (CNG) and/or Liquefied Natural Gas (LNG).” Page four contains the Company’s bottom line response: “Liberty is offering an indicative price range of [-----] per MMBTU.” This motion seeks Commission approval to maintain the confidentiality of those figures.

3. Confidential Attachment WJC-8 is the Company's business plan, titled the "Hanover and Lebanon Expansion Plan" (the "Expansion Plan"). The Expansion Plan includes the Company's sales and marketing plan for Hanover and Lebanon, an engineering and operations overview, the fuel procurement strategy, the Company's financial plan and analysis, and the public and community relations plan. In this motion the Company seeks a protective order providing for the confidential treatment of (a) various references within the text of the Expansion Plan, (b) portions of Appendix II-26, the Company's DCF analysis of the Hanover/Lebanon project, and (c) the entirety of 13 documents attached to the Expansion Plan (Appendices I-2, I-3, II-1, II-2, II-3, II-18, II-19, II-20, II-21, II-22, II-23, II-24, and II-25).

Legal Standards.

4. Puc 203.08(a) states that the Commission "shall ... 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" Puc 203.08(b) requires Liberty Utilities to (1) submit the documents for which confidential treatment is sought, (2) provide "[s]pecific reference to the statutory or common law support for confidentiality," and (3) give "a detailed statement of the harm that would result from disclosure."

5. First, the "documents for which confidential treatment is sought" have been submitted as part of the filing for the Hanover and Lebanon franchise made this date.

6. Second, each specific request can be supported by at least one of five separate legal arguments. These five arguments are described in detail below, are given a title, and are then applied to the various references and documents for which the Company seeks confidential treatment. The manner chosen to conduct this analysis consists of tables that describe each document or reference, that list the applicable legal rule supporting confidentiality, and that

contain “statement[s] of harm that would result from disclosure” to satisfy the third element of Puc 203.08(b) quoted above.

Legal Bases for the Company’s Confidentiality Requests.

7. RSA 91-A is the starting point for the Company’s confidentiality requests. The relevant section provides:

The following governmental records are exempted from the provisions of this chapter: ... Records pertaining to ... *confidential, commercial, or financial information* ... and other files whose disclosure would constitute *invasion of privacy*.

RSA 91-A:5, IV (emphasis added).

8. The reasons for the Company’s confidentiality requests fall into one or more of the following five categories, all of which are based on RSA 91-A:5, IV.

Customer:¹ Customer information, including the name, address, and other identifying information about current or potential customers, is “confidential” under the “invasion of privacy” clause of RSA 91-A:5, IV. *See* Puc 201.04(a)(2) (“All documents submitted to the commission or staff ...shall become matters of public record, subject to RSA 91-A ... with the following exceptions ... Information about individual residential customers, the disclosure of which would constitute an invasion of privacy within the meaning of RSA 91-A:5, IV”); *Northern Utilities*, Order No. 23,970 (May 10, 2002) (granting confidential treatment of “customer-specific information, including names and account numbers”).

¹ These category headings will be used as a shorthand for the legal arguments in support of each confidentiality request in the tables below.

Third Party: Commercial, financial, and proprietary information of third parties, such as forecasts, reports, and analyses fall under the “confidential, commercial, or financial information” exemptions of RSA 91-A:5, IV. In *Electric Distribution Utilities*, Order No. 25,811 (Sept. 9, 2015), the Commission was asked whether,

data, which pertains to gas prices, hypothetical and actual Locational Marginal Prices in the ISO-New England regional electricity market, and hypothetical energy cost savings figures developed by Spectra's consultant, ICF, is “confidential, commercial, or financial information” exempt from public disclosure under RSA 91-A:5, IV, as disclosure would constitute an invasion of privacy.

Id. at 1-2. The Commission granted the request:

The Commission recognizes that intellectual property, in the form of proprietary data sets developed by technical consultants from disparate sources, is worthy of protection from public disclosure where appropriate. In this case, we find that the public’s interest in reviewing the data sets in question is not sufficient to outweigh the benefit derived from maintaining the confidentiality of that information. Disclosure of this non-publically-disseminated information could result in financial harm to Spectra and Spectra’s consultant, ICF, insofar as it contains competitively sensitive, proprietary information, and there is no indication that disclosure of the information would inform the public about the workings of the Commission.

Id. at 5 (citation omitted); see *Unitil Energy Systems*, Order No. 25,214 at 36 (Apr. 26, 2011) (granting confidential treatment of “certain tables contained within the ECI report that depict results that ECI obtained from its analysis, stating that the tables at issue were developed by ECI for the purpose of efficiently serving all of its clients and, in this instance, performing its assigned responsibilities in its engagement with UES, thus representing its proprietary intellectual property”).

Contracts: Copies of agreements that contain commercial and financial terms, the disclosure of which would put the Company at a competitive disadvantage in

negotiating a subsequent contract, are confidential. *Investigation of Utility Billing Practices*, Order No. 24,222 at 12 (Oct. 24, 2003) (“The dispositive factor is the reality that utilities may find it necessary to negotiate similar arrangements in the future. Such negotiations would be hampered from the utilities’ perspective if there were public disclosure of the terms they were previously willing to accept”).

LU data: Liberty Utilities’ own collections of data, forecasts, and analyses of the relevant financial, load, and customer related data for the Hanover/Lebanon project, and for other projects cited in support this petition, and conclusions drawn from those forecasts are confidential. This commercially sensitive information is protected under RSA 91-A:5, IV. *See EnergyNorth Natural Gas*, Order No. 25,094 at 12 (Apr. 29, 2010) (“Disclosure of National Grid’s existing arrangements or its expectations about pricing, supply, and demand of natural gas would reveal the internal business decisions of the company and, at the same time, injure its bargaining position with its potential future suppliers of gas”); *Public Serv. Co. of N.H.*, Order No. 25,178 at 17 (Dec. 17, 2010) (granting motion to “protect the five-year forecast ... as well as the assumptions used in developing the forecast”); *EnergyNorth Natural Gas, Inc.*, Order No. 23,794 (May 14, 2001) (granting motion to protect the company’s “calculation of Firm Sales Cost of Gas Rate,” predating Puc 201.06(a)(11) which made such information routinely confidential).

LU plans: Liberty Utilities’ plans and designs for Hanover and Lebanon and for other projects that the Company cites in support of this petition, which plans include system diagrams, maps, and other utility infrastructure, are protected by RSA 91-A:5, IV. In *Public Serv. Co. of N.H.*, Order No. 24,695 at 31 (Nov. 8, 2006), the Commission granted confidential treatment “of an internal report dealing with potential arrangements with the

developer of the proposed wind generation facility in Lempster, exploring whether PSNH should enter into a purchase power contract with the facility and provide assistance with construction of the facilities necessary to interconnect the project with PSNH's transmission and distribution system.” And in *Aquarion Water Company*, Order No. 25,863 (Feb. 1, 2016), the Commission found to be confidential “infrastructure information ‘including identification of areas of the distribution system in need of rehabilitation, repair, or replacement.’”

Specific Claims of Confidentiality.

9. First, Confidential Attachment WJC-3, Liberty Utilities' response to Dartmouth College's RFP that the Company could offer “an indicative price range of [-----] per MMBTU,” meets the “LU Data” basis for confidentiality as the Company's “expectations about pricing.” The “statement of harm that would result from disclosure” is that disclosure could jeopardize the Company's ability to negotiate with potential anchor customers to the detriment of all Liberty Utilities customers.

10. Second, following is a table listing the references in the Expansion Plan itself which the Company claims are confidential. The tables cite the legal basis for the claim of confidentiality using the shorthand labels from paragraph 3 above, and provide a statement of the harm that would flow from disclosure. These references are all shaded in the confidential version of Attachment WJC-8:

Bates page	Description	Legal Basis (from ¶8)	Statement of Harm
067	ICF created table showing prospect count and annual expected load in Hanover and Lebanon.	Third Party	Disclosure of ICF work product could cause financial harm as it is proprietary, non-public, and commercially sensitive.
080	Table of estimated load, current fuel, and status of negotiations with potential anchor customers.	Customer LU Data	Disclosure may violate the customers' privacy, and may cause the Company economic harm

			as it negotiates with these potential anchor customers.
083	Table showing the design basis for Sanborn Head “fatal flaw” analysis.	Third Party LU Plan	Disclosure of Sanborn Head work product could cause financial harm as it is proprietary, non-public, and commercially sensitive. Disclosure may publicize the Company’s planned infrastructure.
083	Estimated market value of Lebanon site.	Third Party	Disclosure may reveal the realtor’s confidential information and business practices.
083	Purchase price of Lebanon site.	Contract LU Data	Disclosure may harm the Company’s ability to negotiate similar purchase agreements in the future, and the price paid is private information not relevant to this docket.
092	Estimated cost to buy CNG storage trailers.	LU Data	Disclosure may reveal the Company’s internal practices and prejudice future negotiations for such trailers.
094	Table listing responses to Keene RFP including bidder names, and proposed LNG and CNG prices.	Third Party	Disclosure may cause competitive harm to the bidders, may reveal their internal and proprietary pricing practices.
095	Table of a supplier’s indicative pricing for CNG delivered to various locations in NH.	Third Party	Disclosure may cause competitive harm to the bidder, may reveal its internal and proprietary pricing practices.
096	List of estimated load of potential anchor customers.	Customer LU Data	Disclosure of estimate load may violate customer privacy. Disclosure of Company-produced estimates may reveal internal practices and cause competitive harm.
097-098	Tables of estimated annual distribution revenues from potential anchor customers over first five years of Hanover/Lebanon project.	Customer LU Data	Estimated revenues are based on Company calculations based on Company-estimated loads and contains customer-specific data. Disclosure may cause privacy harm to potential customers, competitive harm to the Company, and disclosure of private Company financial and other data.

11. Following is a similar list of the appendices to the Expansion Plan for which the Company seeks confidential treatment, the basis for the claim of confidentiality, and a statement of harm that would result from disclosure.

Confidential Appendix	Description	Category	Statement of harm
I-2	Signed Letter of Intent containing customer-specific information.	Customer Third Party	Disclosure may violate customer’s privacy and cause competitive harm to the Company

			as the LOI contains proposed terms specific to this customer.
I-3	Contract between Liberty Utilities and ICF International.	Third Party Contract	Contract contains many private details about ICF, its products and practices, the financial terms of this contract. Disclosure may cause competitive harm to ICF. Disclosure may harm the Company's ability to negotiate similar contracts in the future, and may reveal financial and operational information.
II-1	A sample map generated containing icons of potential customers within a certain area.	Customer	Disclosure of the sample map would reveal the names and addresses of potential customers in Lebanon.
II-2	A sample "customer card" that appears when one clicks on the icons described above, containing actual customer information.	Customer	Disclosure of the sample customer card would reveal the name, address, and other information of a potential customer in Lebanon.
II-3	A sample customer list generated from the above-described map, containing actual customer information.	Customer	Disclosure of the sample list would reveal the names and addresses of potential customers in Lebanon.
II-18	"Fatal flaw" analysis by Sanborn, Head of the proposed site with details of the site and proposed facility.	Third Party LU plans	Disclosure would violate Sanborn, Head's proprietary rights to its analysis, and would disclose the Company's infrastructure plans.
II-19	Valuation opinion of the proposed site by a local realtor, which the Company used to negotiate the option agreement.	Third Party LU data	Disclosure may reveal the realtor's proprietary interests and business practices. Disclosure may harm the Company's competitive interests when it seeks to negotiate similar agreements in the future.
II-20	Option agreement between Liberty Utilities and the landfill site owner.	Contract	Disclosure may harm the Company's ability to negotiate similar contracts in the future, and may reveal confidential financial and operational information.
II-21	Liberty Utilities' RFP for indicative pricing to convert Keene to CNG/LNG.	LU Plans	The RFP contains details of the Company's planned infrastructure in Keene. Disclosure may cause competitive and security harm.
II-22	Contract with XNG, the supplier chosen in the above RFP.	Third Party LU Plans Contract	Disclosure may cause XNG competitive or proprietary harm, may disclose the Company's infrastructure plans, and may harm both parties' ability to negotiate similar contracts in the future.

II-23	XNG's presentation to Liberty Utilities.	Third Party	Disclosure may cause XNG competitive or proprietary harm, may disclose the Company's infrastructure plans, and may harm both parties' ability to negotiate similar contracts in the future.
II-24	A supplier's indicative price proposal for other CNG/LNG services for the Company.	Third Party LU Plans	Disclosure may cause the supplier competitive or proprietary harm, and may disclose the Company's supply plans causing harm to its ability to negotiate with other suppliers.
II-25	The Company's construction estimates for the first five phases of Hanover/Lebanon project.	LU Data LU Plans	Disclosure would reveal the Company's internal forecasting, processes, costs, and data; may reveal the Company's infrastructure plans; and may harm its ability to negotiate with contractors who would be hired to construct the system.
II-26 (partially redacted)	Liberty Utilities' DCF analysis for the proposed build-out of Hanover/Lebanon project.	Customer LU Data	Disclosure would reveal internal Company estimates of revenue to be received from specific customers which may violate customer privacy.

12. 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 Co. of N.H.*, Order No. 25,313 at 11-12 (Dec. 30, 2011). The first step is to determine if there is a privacy interest at stake that would be invaded by disclosure. If so, 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 Co. of N.H.*, Order 25,167 at 3 (Nov. 9, 2010). If there is an important privacy interest and a public interest in disclosure, the Commission must balance those interests. *Id.* at 3-4.

13. Here, Liberty Utilities, potential customers, and the third parties discussed above have clear privacy interests in the information and documents described above.

14. Any public interest in disclosure is outweighed by the privacy and business interests of the Company, the potential customers, and third parties.

15. Given the substantial interests in confidentiality, the lack of a substantial public interest in disclosure, Liberty Utilities has established the requirements for confidential treatment under Puc 203.08.

WHEREFORE, Liberty Utilities respectfully requests that the Commission:

- A. Grant this motion for a protective order providing for the confidential treatment of the references and documents described above; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a
Liberty Utilities



Date: November 23, 2016

By: _____

Michael J. Sheehan, Esq. #6590
15 Buttrick Road
Londonderry, NH 03053
(603) 216-3635
michael.sheehan@libertyutilities.com

Certificate of Service

I hereby certify that on November 23, 2016, a copy of this Motion has been forwarded to the service list in this docket.



By: _____
Michael J. Sheehan