

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 17-048

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES

Distribution Service Rate Case

Motion for Protective Order and Confidential Treatment Regarding Compensation Information, and for Waiver of Puc 203.02 and Puc 203.08

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or the “Company”), through counsel, respectfully moves the New Hampshire Public Utilities Commission, first, pursuant to Puc 203.08 to grant confidential treatment to certain compensation information required by Puc 1604.01 that is included with the Company’s rate case filing made this date, and second, pursuant to Puc 201.05 to waive the requirements of Puc 203.02 and Puc 203.08 related to how the copies of the compensation information should be filed.

In support of this motion, the Company states as follows:

1. Puc 1604 requires a petitioning utility to file a number of documents with its rate case, including “[a] list of officers and directors of the utility and their compensation for the last 2 years.” Puc 1604.01(a)(14).

2. The Company included in its Puc 1604 filing a redacted version of a single-page document that contains the salary and compensation information for officers and directors of EnergyNorth as required by Puc 1604.01(a)(14) (the “Compensation Information”). The Keene Division is also part of EnergyNorth, so a reference to the Compensation Information is contained in the Keene Division’s rate case filing requirements.

Motion for Confidential Treatment.

3. In this motion EnergyNorth seeks confidential treatment of the Compensation Information regarding the Company's directors, the current and former President, and the current and former Secretary/Treasurer because the Company holds that information in confidence and has not previously made the information available to the public.¹

4. Protective treatment of the Compensation Information is appropriate because the individuals have a privacy interest in their compensation and there is no corresponding public interest that tips the balance in favor of disclosure.

5. RSA 91-A:5, IV, exempts from public disclosure records that constitute confidential, commercial, or financial information. The Commission applies the three-step test from *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), to determine whether information should be protected from public disclosure. *See, e.g. Public Serv. Co. of N.H.*, Order No. 25,313 at 11-12 (Dec. 30, 2011). The first step is to determine whether 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 whether there is a public interest in disclosure. 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 Serv. Co. of N.H.*, Order 25,167 at 3 (Nov. 9, 2010). If these first two these steps are met, the Commission weighs the interests of keeping the record public against the harm from disclosure. *Id.* at 3-4.

6. There is a clear privacy interest in the Compensation Information. Neither EnergyNorth nor APUC has disclosed the Compensation Information, and they each take steps

¹ Director Robertson is also CEO of Algonquin Power and Utilities Corp. ("APUC"), EnergyNorth's publicly traded parent. When APUC discloses Mr. Robertson's compensation through its required public filings, EnergyNorth will provide that information here.

to maintain the information in strict confidence by securing it and disclosing it within the affiliated companies only on a need-to-know basis. In addition to exposing the personal, non-public information of a few key employees, and thereby invading their privacy, release of the Compensation Information could disrupt relations among employees and relations between the companies and their employees, which could affect the ability to recruit and retain employees, causing competitive harm. Thus, disclosure of the Compensation Information would not only invade the individual's privacy interests, but could also harm the companies themselves.

7. The Commission has previously found that utility employees have a privacy interest in their compensation information. *See EnergyNorth Natural Gas, Inc.*, Order No. 25,119 at 8 (June 25, 2010), and the Commission granted a motion identical to this motion in the most recent rate case of EnergyNorth's electric affiliate, *see Granite State Electric Company*, DE 16-383 (transcript of June 17, 2016, hearing, at 6). There is no compelling reason for the Commission to deviate from that precedent here.

8. Given the significant privacy interest in the Compensation Information, the Commission must then consider whether there is a public interest in its disclosure, which presents the question of whether disclosure informs the public of the conduct and activities of its government. *Public Serv. Co. of N.H.*, Order No. 25,617 at 3. The interest in disclosure is weak.

9. While one might argue that release of generic compensation information may provide some insight into the Commission's rate setting activities in this case, there is no need to publicize the salaries and benefits of individual officers and directors to gain insight into how the Commission sets rates. The public information that the Company has provided in support of its rate request is sufficient to inform the public of how the Commission sets rates.

10. For these reasons the Company submits that the balance tips decidedly in favor of privacy, and thus asks the Commission to issue a protective order for the Compensation Information, marked as confidential in the document filed as required by Puc 1604.01(a)(14).

Motion to Waive Puc 203.02 and Puc 203.08.

11. Given that the Compensation Information is the only confidential page in a voluminous filing, the Company chose to include with this motion an envelope containing seven copies of that single confidential page, and to include the redacted version in all seven copies of the entire filing. This manner of filing the Confidential Information is simple, it reduces the chance of inadvertent disclosure because the confidential page can be more easily managed, and the Commission accepted this method when EnergyNorth filed its last rate case in 2014. *See* August 1, 2014, cover letter in Docket No. DG 14-180.²

12. The Company files this waiver request because Staff took a different position when Granite State followed this same procedure when filing its 2016 rate case. On that occasion, when the Company repeated the process successfully used with the DG 14-180 filing, Staff found that process to be insufficient and required the Company to insert the confidential page in six copies of the complete filing, and leave the redacted page in the seventh copy. To the extent Staff's 2016 interpretation of the rules is correct, the Company now seeks a waiver of Puc 203.02 and 203.08 and for the Commission to accept this filing of the Confidential Information, which is consistent with the Company's and Staff's 2014 interpretation of the rules.

13. Puc 203.08(b)(1) requires a motion for confidential treatment to "contain ... the documents, specific portions of documents, or a detailed description of the types of information

² "I am also enclosing a separate envelope containing seven copies of confidential compensation information required to be filed pursuant to Puc 1604.01(a)(14). This information is simultaneously being filed in redacted form with the rest of the Company's permanent rate case materials."

for which confidentiality is sought.” Puc 203.02(a)(1) says, “for a filing to be effective in an adjudicative proceeding, a party shall: (1) File one original and 6 paper copies of all documents with the commission, and, for material submitted with a motion under Puc 203.08, file one public copy and 7 confidential copies.” (Emphasis added.)

14. One could interpret “all documents” to mean the entire rate case filing, and interpret “materials submitted with a motion under Puc 203.08” to be the single confidential page. Inserting those interpretations into the rule, it would read as follows: “for a filing to be effective in an adjudicative proceeding, a party shall: (1) File one original and 6 paper copies of [the entire rate case filing] with the commission, and, for [the single confidential page], file one public copy and 7 confidential copies.”

15. The Company only seeks confidential treatment of the single page which could reasonably be considered “the document ... for which confidentiality is sought.” Thus, the manner in which the Company makes this filing is consistent with the rules.

16. However, to the extent the Company’s interpretation above is incorrect, the Company requests a waiver of Puc 203.02(a)(1) and for the Commission to accept the Compensation Information as filed.

17. Puc 201.05 states that the Commission shall waive the provisions of any of its rules when the waiver serves the public interest and will not disrupt the orderly and efficient resolution of matters before the Commission. In determining whether a waiver will serve the public interest, the Commission examines whether compliance would be onerous or inapplicable given the circumstances, or the purpose of the rule would be satisfied by another method.

18. The Company’s proposed method of filing the single confidential page serves the public interest in that it may better protect the document’s confidentiality and may simplify the

filing process. The proposed method does not disrupt the orderly and efficient resolution of matters before the Commission. And the purpose of the rule, which is to effectively provide the Commission with an appropriate number of copies of the confidential document in a manner that best allows Commission review, is met through the method that the Company employs here.

WHEREFORE, EnergyNorth respectfully requests that the Commission:

- A. Grant the Compensation Information protective treatment;
- B. To the extent the manner in which the Company filed the confidential document is not consistent with the above-quoted provisions of Puc 203.02 and Puc 203.08, waive those rules and accept the Company's filing; and
- C. 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: April 28, 2017

By: _____
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Certificate of Service

I hereby certify that on April 28, 2017, a copy of this Motion has been forwarded to the service list in this docket.



Michael J. Sheehan