

State of New Hampshire
Public Utilities Commission

Docket No. DG 17-xxx

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

Least Cost Integrated Resource Plan

Motion for Protective Order
Related to Certain Information in LCIRP Appendix 6

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or “the Company”), through counsel, respectfully moves the Commission pursuant to Puc 203.08 for a protective order precluding the disclosure of figures contained in Appendix 6 to the Company’s Least Cost Integrated Resource Plan (LCIRP) filed this date.

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

1. The body of the LCIPR contains no information for which EnergyNorth seeks protective treatment. Certain identifying information and figures in the SENDOUT® Results contained in Appendix 6, however, are confidential.

2. The confidential information includes commercially sensitive information that would either disclose specific pricing from a supplier who has requested confidential treatment of the pricing terms, or general commercially sensitive information that would hinder the Company’s ability to negotiate favorable commercial terms with suppliers in the future. The confidential treatment of the information at issue here is consistent with the Company’s prior

requests for confidential treatment in prior matters. See Docket No. DG 14-380, Transcript of February 13, 2015, hearing, at 30-34.

3. 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.

4. Applying this three part test, the first inquiry is whether there is a privacy interest in the commercial terms for which the Company seeks protective treatment. The Company has an expectation of privacy in key terms such as pricing and related commercial provisions in supply agreements based on existing Commission practice. Commission rules recognize the need to protect gas supply contracts through their explicit acknowledgment that “pricing and delivery special terms of supply agreements” provided in cost of gas proceedings are accorded confidential treatment. See Puc 201.06(a)(26)(b). Based on the Commission’s routine treatment of pricing and delivery special terms in cost of gas proceedings, the Company has a reasonable

expectation of privacy that the same type of information will be accorded confidential treatment, albeit when introduced in another type of docket.

5. 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 very limited amount of capacity supply pricing and delivery terms that are the subject of this motion would not materially advance the public's understanding of the Commission's analysis in this proceeding. The public's interest is in understanding the Commission's review of the LCIRP. The Company's expectation is that the work that the Commission undertakes to review this LCIRP will be publicly available and, as a result, the Commission's work will be available for public scrutiny. Even if one were to conclude that there is a public interest in disclosure of the few pricing, delivery, and financial terms at issue here, the harm that could occur as a result of that disclosure is well outweighed by the privacy interests at stake. It may be disadvantageous to the Company's negotiating position if any future suppliers were aware of certain pricing and other key terms upon which the Company was willing to conduct business. That harm would ultimately accrue to the Company's customers, since the costs associated with any capacity arrangement are charged to customers through the Company's cost of gas charge. Thus, the Company submits that there is no public interest in disclosing these key contract terms.

6. For these reasons, EnergyNorth requests that the Commission issue a protective order preventing the public disclosure of the information highlighted (or redacted) in Attachment 6 to the LCIRP.

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: October 2, 2017

By: _____
Michael J. Sheehan, Esq. #6590
Senior Counsel
15 Buttrick Road
Londonderry, New Hampshire 03053
Telephone (603) 216-3635
Michael.Sheehan@libertyutilites.com

Certificate of Service

I hereby certify that on October 2, 2017, a copy of this Motion has been forwarded to the service list in this docket.



Michael J. Sheehan