

State of New Hampshire  
Public Utilities Commission

**Docket No. DG 17-152**

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

**Least Cost Integrated Resource Plan**

**Motion for Confidential Treatment of Discovery Responses.**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty, through counsel, respectfully moves the Commission pursuant to Puc 203.08 for a protective order preserving the confidentiality of certain confidential attachments to data requests that the Company provided during discovery in this matter.

In support of this motion, Liberty represents as follows:

1. Liberty notified the parties pursuant to Puc 203.08 to consider the attachments listed below to be confidential without then filing a motion.<sup>1</sup> The rule allows such a claim of confidentiality:

In lieu of immediately filing a motion for confidential treatment, a party providing a document to the commission staff in discovery that the party wishes to remain confidential shall accompany the submission with a written statement that:

- (1) The party submitting such documents has a good faith basis for seeking confidential treatment of the documents pursuant to this rule; and
- (2) Such party intends to submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in such proceedings.

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<sup>1</sup> Attached are the following data responses containing the assertions of confidentiality of the attachments and supporting authority: Staff 4-5 (Bates 005); Staff 4-14 (Bates 007), and CLF 4-14 (Bates 015).

Puc 203.08(d). The rule requires the party asserting confidentiality to file a motion to ensure the documents remain confidential:

Documents submitted to the commission or staff accompanied by a written statement pursuant to (d) shall be treated as confidential, provided that the party submitting the documents thereafter files a motion for confidential treatment at or prior to the commencement of the hearing in the proceeding.

Puc 203.08(e).

2. Liberty thus files this motion for confidential treatment of the following attachments to data responses:
  - a. Confidential Attachment Staff 4-5.b (third pricing withing SENDOUT reports), *see* Bates 7;
  - b. Confidential Attachment Staff 4-14.1.xlsx and Confidential Attachment Staff 4-14.2.xlsx (proprietary forecast data from S&P Global Market Intelligence), *see* Bates 8, 14; and
  - c. Confidential Attachment CLF 6-34.2.xlsx (same S&P information), *see* Bates 16.
3. All four attachments contain the confidential third-party pricing information which is protected from disclosure by RSA 91-A:5, IV as “confidential, commercial, or financial information” of a third party.
4. In an order earlier in this docket the Commission granted confidential treatment of the same information that appears in Confidential Attachment Staff 4-5.b. Order No. 26,159 (July 17, 2018) (third party pricing information within the SENDOUT reports Staff 4-5.b).
5. The information in Confidential Attachments Staff 14.1.xlsx, Staff 4.14.2.xlsx, and CLF 6-34.2.xlsx was provided by S&P to Liberty under the terms of a non-disclosure agreement which requires the Company to maintain its confidentiality. Confidential treatment of this same information was requested in the Motion for Confidential Treatment

the Company filed with its rebuttal testimony in October 2019, which motion has not yet been addressed.

6. Puc 203 also requires a motion for confidential treatment to contain “a detailed description of the types of information for which confidentiality is sought,” reference to the legal support for confidentiality, a “statement of the harm that would result from disclosure,” and “any other facts relevant to the request for confidential treatment.” Puc 203.08(b). The information satisfying this portion of the rule is stated above and in the attached data responses.
7. The Commission recently described its analysis of requests for confidential treatment of discovery responses:

RSA Chapter 91-A ensures public access to information about the conduct and activities of government agencies or “public bodies” such as the Commission. Disclosure of records may be required unless the information is exempt from disclosure under RSA 91-A:5. Among other types of information, RSA 91-A:5, IV exempts “confidential, commercial, or financial information.” The party seeking protection of the information has the burden of proving that confidentiality and/or privacy interests outweigh the public’s interest in disclosure. *Grafton County Attorney’s Office v. Canner*, 169 N.H. 319, 322 (2016). Puc 203.08(b) requires a motion for confidential treatment to include, among other things, a “[s]pecific reference to the statutory or common law support for confidentiality” and a “detailed statement of the harm that would result from disclosure.” Liberty asserted a confidentiality interest, which requires Liberty to “prove that disclosure is likely to: (1) impair the information holder’s ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.” *Hampton Police Ass’n, Inc. v. Town of Hampton*, 162 N.H. 7, 14 (2011). The benefits of disclosure to the public are then weighed against the interest(s) in nondisclosure. *See id.*

Order No. 26,352 at 3 (April 30, 2020).

8. After review of the attachments, the law supporting confidentiality as to each, and balancing of the “benefits of disclosure to the public” against “the interests in

nondisclosure,” the Company respectfully asks the Commission to find the above information warrants confidential treatment.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant confidential treatment to the attachments listed above; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

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



Date: August 12, 2022

By:

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Michael J. Sheehan, Director, Legal Services #6590  
114 North Main Street  
Concord, NH 03301  
Telephone (603) 724-2135  
[michael.sheehan@libertyutilities.com](mailto:michael.sheehan@libertyutilities.com)

Certificate of Service

I hereby certify that on August 12, 2022, a copy of this Motion has been electronically forwarded to the service list in this docket.



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Michael J. Sheehan