

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

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

Docket No. DG 17-198

**PETITION FOR APPROVAL OF FIRM SUPPLY AND TRANSPORTATION AGREEMENTS
AND THE GRANITE BRIDGE PROJECT**

**MOTION OF REPSOL ENERGY NORTH AMERICA CORPORATION IN SUPPORT OF
LIBERTY UTILITIES' MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL
TREATMENT AND ADDITIONAL REQUEST FOR PROTECTION OF COMPETITIVE
INFORMATION TO PROHIBIT ACCESS BY COMPETITOR PARTIES**

I. INTRODUCTION

On March 15, 2019, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("Liberty") filed a Motion for Protective Order and Confidential Treatment ("Motion for Protective Order") to preclude the disclosure of certain commercially sensitive information contained in the Supplemental Direct Testimony of Francisco C. DaFonte and William R. Killeen ("Supplemental Testimony") and attachments, also filed on March 15, 2019.

Pursuant to N.H. Code of Administrative Rules Puc 203.07 and 203.08, Repsol Energy North America Corporation ("Repsol") hereby files this Motion In Support of Liberty's Motion for Protective Order particularly with respect to Liberty's request for confidential protection of the third party pricing information contained in the Supplemental Testimony and attachments that Liberty designated as Category 5 information in Liberty's Motion for Protective Order. By this Motion, Repsol further requests that the New Hampshire Public Utilities Commission ("Commission") include in

its order granting confidentiality protection a provision that prevents competitor parties in this proceeding from viewing each others' confidential information, consistent with the confidentiality protection that the Commission previously provided in its August 1, 2018 Order Granting Confidential Treatment (Order No. 26,166) ("Confidentiality Order").

II. PROCEDURAL HISTORY

On December 22, 2017, Liberty petitioned for Commission approval of a delivered supply contract with ENGIE Gas & LNG, LLC ("Engie"), and a precedent agreement with Portland Natural Gas Transmission System ("PNGTS") for firm transportation capacity; and requested prudence determinations for the proposed Granite Bridge Pipeline and Granite Bridge LNG Facility (together, the "Granite Bridge Project"). At the same time, Liberty filed a motion for a protective order, asserting certain information warranted such protection.

On March 14, 2018, Repsol filed a motion in support of Liberty's motion for a protective order, and a separate request for confidential treatment of its information from other competitors. On May 18, 2018, Repsol filed an amended motion seeking to keep its information from the public and all intervening parties to this proceeding, except for the Office of Consumer Counsel ("OCA"). On August 1, 2018, the Commission issued the Order granting Repsol's and Liberty's request for confidential treatment of the requested information. In the Order, the Commission found that "Repsol and ENGIE are competitors and that each may be specifically harmed by the disclosure of its pricing information to the other" and ordered that "[Repsol and ENGIE] shall not be entitled to one another's sensitive information during the course of this proceeding." Confidentiality Order at 6.

On March 15, 2019, Liberty filed the Supplemental Testimony and attachments and concurrently filed the Motion for Protective Order seeking to seek protection of

commercially sensitive information, including third party pricing information contained in the Supplemental Testimony and attachments that Liberty designated as category 5 information. Motion for Protective Order at 2, 3-4.

III. LEGAL STANDARD

Under New Hampshire law, confidential protection is appropriate when it is determined that a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008); *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 26,159 at 2 (July 17, 2018) (“Order No. 26,159”). The Commission makes this determination using a three-step test in which the Commission first inquires whether the information involves a privacy interest and next asks if there is a public interest in disclosure. Order No. 26,159 at 2. The Commission then balances those competing interests and decides whether disclosure is appropriate. *Id.* When the document, or information contained therein, involves a privacy interest, disclosure is warranted only when such disclosure informs the public of the conduct and activities of its government. *Id.*

In the Commission’s prior Confidentiality Order, the Commission “reviewed the information for which Liberty [sought] protection, which includ[ed] Repsol’s information,” using the three step analysis. Confidentiality Order at 5-6. The Commission found that such information “constitute[ed] confidential and commercial information,” that disclosure of such information “would likely cause substantial harm to the competitive position of [Liberty, Repsol, ENGIE, or PNGTS] and Liberty’s customers,” and “that the public’s interest is outweighed by the commercial harm that disclosure would cause to Liberty, its suppliers, and its customers.” Confidentiality Order at 6. The Commission also found that “Repsol and

ENGIE are competitors and that each may be specifically harmed by the disclosure of its pricing information to the other” and ordered that “[Repsol and ENGIE] shall not be entitled to one another’s sensitive information during the course of this proceeding.” *Id.*

In its March 15, 2019 Motion for Protective Order, Liberty sought a Commission order to protect, among other things, third party supplier information that is of the same type or derived from the same source as the information protected in the Commission’s prior Confidentiality Order. Thus, the same competitive concerns exist with respect to access by competitor parties to this confidential third party supplier information as existed with respect to the confidential third party supplier information contained in Liberty’s initial Petition. This is because the Repsol information that Liberty used in its Supplemental Testimony and attachments is the same Repsol information that Liberty used in its initial Petition, or was derived from the same Repsol information. Repsol shared this information with Liberty subject to a confidentiality agreement. Accordingly, Repsol continues to have a proprietary interest and a privacy interest in the confidential and commercial Repsol supply pricing information.

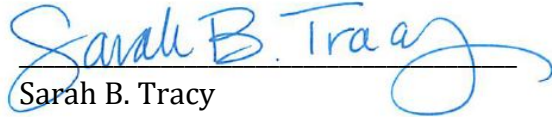
Furthermore, disclosure of such information to competitors would likely cause substantial harm to Repsol’s competitive position in the marketplace because disclosure would allow Repsol’s competitors to price their product to outbid Repsol or would provide them an unfair advantage in negotiations to supply natural gas or LNG to customers. This disclosure may also ultimately cause harm to Liberty’s customers if third party suppliers are reluctant to provide confidential supply information to Liberty on a going forward basis for fear of public disclosure of such information in the market. Finally, the disclosure of Repsol’s supply pricing information to competitor parties will not inform the public of

the conduct and activities of its government.

Therefore, Repsol respectfully requests that any confidentiality order issued by the Commission include a provision prohibiting competitor parties from having access to each others' third party supply pricing information, consistent with the confidential protections that the Commission previously adopted in the August 1, 2018 Confidentiality Order. *See* Confidentiality Order at 6-7.

Respectfully submitted,

Repsol Energy North America Corporation

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Dated: March 25, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document will be sent via electronic mail to all persons on the Service List in Docket No. DG 17-198 on March 25, 2019.

By: 
Sarah B. Tracy