

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 17-198**

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

**Petition to Approve Firm Supply and Transportation Agreements  
and the Granite Bridge Project**

**Order Granting Confidential Treatment**

**ORDER NO. 26,280**

**August 1, 2019**

This order exempts from public disclosure certain supplier and pricing information filed by Liberty Utilities. This order also confirms that competing gas suppliers will not be permitted to view each other's confidential information during this proceeding.

**I. PROCEDURAL HISTORY**

On December 22, 2017, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty or the Company) petitioned for approval of a delivered supply contract with ENGIE Gas & LNG, LLC (ENGIE), and a precedent agreement with Portland Natural Gas Transmission System (PNGTS). Liberty sought those approvals in connection with its proposed Granite Bridge Pipeline and Granite Bridge LNG Facility (jointly, the Granite Bridge Project). Concurrently, Liberty included a motion for confidential treatment of certain information in its petition filings. On August 1, 2018, the Commission approved Liberty's request for confidential treatment in Order No. 26,166.

On March 15, 2019, Liberty filed Supplemental Direct Testimony in this proceeding with a second motion for confidential treatment (Motion) of new information included in the

supplemental filing. On March 26, 2019, Repsol filed a motion in support of Liberty's Motion. No other party filed a response.

Liberty's Motion and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-198.html>.

## **II. POSITIONS**

### **A. Liberty**

Liberty requested confidential treatment of information that falls within five categories: (1) construction estimates by third party contractors that Liberty treats as confidential; (2) pricing and other material terms included in a Memorandum of Understanding with Calpine Corporation (Calpine MOU) that includes an express confidentiality provision; (3) a document regarding supply constraints at Dracut and on the Tennessee Gas Pipeline (TGP) Concord Lateral that Liberty treats as confidential; (4) estimated costs for TGP to upgrade the Concord Lateral included in email exchanges between TGP and EnergyNorth; and (5) third-party pricing embedded in five SENDOUT<sup>®</sup> runs testing different cost variables, including gas prices, quantities, and terms. Regarding items (4) and (5), Liberty argued that Order No. 26,166 governs the TGP cost information and the third party pricing contained in the SENDOUT<sup>®</sup> reports, because the information is the same, of the same type, or derived from information which the Commission determined to be confidential in that earlier order.

Liberty asserted a privacy interest in the remaining categories of information included in the supplemental filing based on the following four factors: (1) RSA 91-A:5, IV exemptions for confidential, commercial, or financial information such as third party cost estimates and bids; (2) an express confidentiality provision in the Calpine MOU; (3) confidential treatment of

similar information in the past, including pricing terms included in the Calpine MOU; and (4) confidential treatment of similar information pursuant to Commission rules, including Puc 201.06(a). Liberty asserted that disclosure of the identified information would cause “substantial” and “grave” competitive harm to the Company and its customers, and could compromise the process that the Company will undertake when it is time to obtain bids for the pipeline and LNG facility. Liberty maintained that the potential harm that would occur if the information were disclosed outweighs the public’s interest in the information.

In addition, Liberty requested that parties that are commercial competitors not be granted access to other parties’ competitively sensitive information included in the supplemental filing, consistent with Commission Order No. 26,166.

#### **B. Repsol**

Repsol supported Liberty’s motion. Repsol also requested that actual or potential competitors intervening in this proceeding be precluded from obtaining contractual and pricing terms, which Repsol exchanged with Liberty under a confidentiality agreement. Repsol maintained that the information is confidential commercial information in which it has a privacy interest, for two reasons: (1) intervenors that are actual or potential competitors do not require the information to be informed of the Commission or the OCA’s activities; and (2) the potential harm to Repsol, Liberty, and Liberty’s customers would outweigh the public interest in the release of the information.

#### **C. Constellation**

Constellation stated that it has “stepped into the shoes of ENGIE” as the assignee of the delivered supply contract between Liberty and ENGIE, which was submitted with Liberty’s initial petition in this proceeding. Constellation maintained that the assigned contract is subject

to the provisions of the Commission's Order No. 26,166 of August 1, 2018, which granted confidential treatment.

### III. COMMISSION ANALYSIS

The New Hampshire Supreme Court and the Commission apply a three-step test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *See 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 (July 17, 2018). Under the test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. Order No. 26,159 at 2. Finally, the Commission balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.*

The Commission has previously determined that the terms of gas supply agreements negotiated by a jurisdictional gas distribution company and certain information underlying those terms constitute sensitive commercial information that warrants confidential treatment. *See EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, Order No. 24,323 at 24 (May 7, 2004) (protecting information regarding gas supply costs and other negotiated contract terms in gas supply contracts, including company capacity decisions, and unredacted supporting testimony, contracts, proposals, and data responses); *Northern Utilities, Inc.*, Order No. 23,964 at 3 (May 3, 2002) (protecting information identifying gas suppliers, as well as terms of gas supply agreements negotiated by a jurisdictional gas distribution company); *see also Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,861 (January 22, 2016) (protecting pipeline pricing information). The Commission has recognized

that this type of information is sensitive commercial information in a competitive market. *See EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, Order No. 23,950 at 3 (April 12, 2002); *see also* Order No. 26,166 in this docket (protecting pricing and delivery terms of supply and capacity contracts and sensitive contract terms of ENGIE, Constellation's predecessor-in-interest).

The information for which Liberty seeks protection includes sensitive commercial information concerning the interests of Constellation, Repsol, and PNGTS. We find that the information constitutes confidential and commercial information under RSA 91-A:5, IV. We further find that disclosure of the information would likely cause substantial harm to the competitive positions of Constellation, Repsol, and PNGTS. Such harm could ultimately flow through to Liberty's customers. *See EnergyNorth Natural Gas, Inc.* Order No. 24,531 at 24 (October 21, 2005). While the public may have some interest in the information, such as aiding its understanding of the Commission's analysis, we find that the public's interest is outweighed by the harm that disclosure would cause to Liberty, its suppliers, and its customers.

Repsol has reiterated its request that its information be kept confidential from its competitors and potential competitors in this proceeding. We find that Repsol and Constellation are competitors and that each may be specifically harmed by the disclosure of its pricing information to the other. They shall not be entitled to one another's sensitive information during the course of this proceeding. *See Public Service Company of New Hampshire*, Order No. 25,167 at 6 (November 9, 2010). Consistent with past practice, Liberty should provide the confidential information to any other party in this docket that signs an appropriate confidentiality and non-disclosure agreement.


**Based upon the foregoing, it is hereby**

**ORDERED**, that the motion for confidential treatment filed by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities is **GRANTED**.

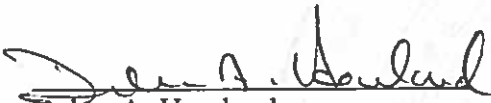
By order of the Public Utilities Commission of New Hampshire this first day of August, 2019.

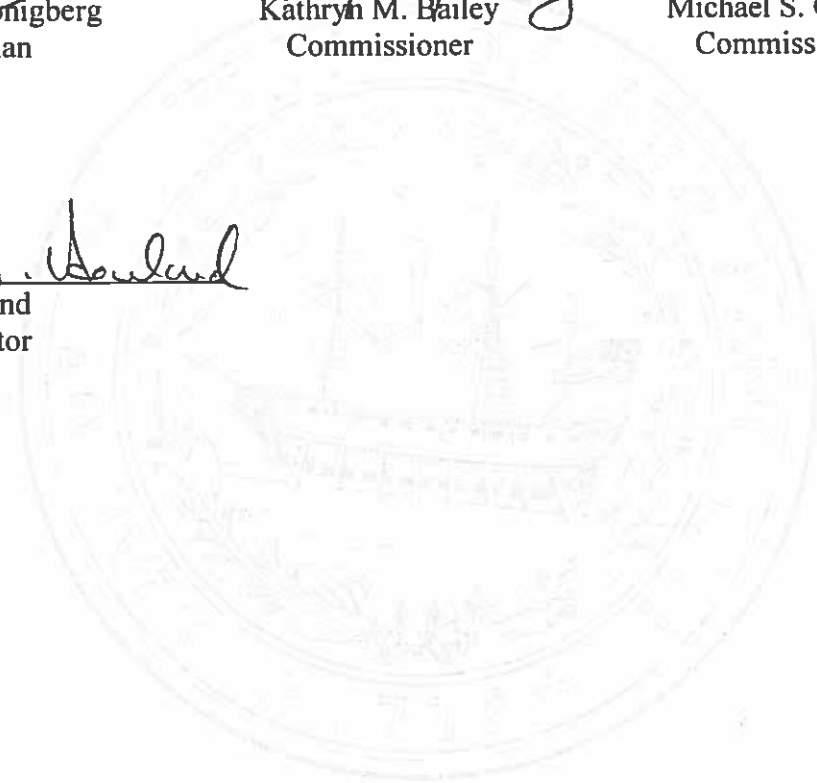
  
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