

THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

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

Docket No. DG 18-092

Petition for a License to Construct and Maintain a  
Natural Gas Pipeline beneath Ashuelot River in Keene

**Liberty's Response to Staff's Objection to Motion for Protective Order  
Related to Discovery Responses**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, through counsel, respectfully responds to Commission Staff's *Objection to Liberty Utilities' Motion for Protective Order Related to Discovery Responses*.

1. Staff objected to Liberty's motion to grant confidential treatment of a Keene system map that was produced in discovery as Confidential Attachment Clark 1-20, and which was marked and admitted as confidential hearing Exhibit 5a, the confidentiality of which is also subject to the outcome of this motion. (Hearing Exhibit 5b was admitted as the redacted version.)
2. The electronic version of the document is a high quality pdf that shows the Company's entire Keene distribution system indicated by red lines that are layered over a street map. One can enlarge the electronic document and see the precise streets containing the system piping, where the pipes start and end, where they cross rivers, and the intersections and junctions of the pipelines. One can see most of this detail even on the

non-electronic pdf version. One inclined to do harm to the distribution system could use this map to find the locations where the least bit of damage could impact the most people.

3. Staff objected to Liberty's motion for two reasons. Staff argued that the motion did not satisfy the procedural requirements of Puc 203.08, and, on the merits, Staff argued that the document does not warrant confidential treatment. Liberty responds to both arguments.

4. Puc 203.08 requires a party seeking confidential treatment of a discovery request to first notify the parties that there is a "good faith basis for seeking confidential treatment," and then "submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing." Puc 203.08(d).

5. Liberty complied with the first requirement by including the following in the body of its response to Clark 1-20:

Confidential Attachment Clark 1-20, a map showing the location of the Company's facilities in Keene with many details of the Company's system, is confidential information that is protected from public disclosure pursuant to Puc 201.06(a)(17) (a utility's physical security plan is presumed confidential), RSA 91-A:5, IV ("confidential, commercial, or financial information"), and RSA 91-A:5, VI ("Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions"). Therefore, pursuant to that authority and Puc 203.08(d), the Company has a good faith basis to seek confidential treatment of this information and will submit a motion seeking confidential treatment prior to the final hearing in this docket.

A copy of the response to Clark 1-20 is attached.

6. The Company complied with the second part of Puc 203.08(d) by filing a motion for confidential treatment prior to the November 26, 2018, hearing.

7. Staff argues the motion was procedurally deficient "because it [did] not state what exemption to disclosure under RSA 91-A:5 applies or what harm disclosure of the Attachment would cause." Objection at 1.

8. To the extent the assertion of confidentiality made in the data response itself is insufficient, quoted above, the Company incorporates and repeats that assertion here to make it part of the motion. The Company treats system maps as “confidential commercial ... information” that is protected from disclosure pursuant to RSA 91-A:5, IV.
9. The map also falls under the spirit, if not the precise letter, of the exemption in RSA 91-A:5, VI, which protects from disclosure those materials “pertaining to matters relating to the preparation for and the carrying out of all emergency functions... that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.” The intent of this subsection is to keep certain information from those who intend harm. Although the map at issue here does not precisely fit the exemption, the Company guards its confidentiality just for that purpose.
10. Staff’s position in this docket contradicts recent orders in which the Commission stated it “routinely” grants confidential treatment of similar information.
11. In *Aquarion Water Co. of New Hampshire, Inc.*, Order No. 25,863 (Feb. 2, 2016), the Commission noted that it “*routinely* protects as confidential, information about utility infrastructure.” (Emphasis added.) The information at issue in *Aquarion Water* was a study that,

contain[ed] confidential infrastructure information “including identification of areas of the distribution system in need of rehabilitation, repair, or replacement” [that was] protected from disclosure under federal law. Aquarion [also] stated that it has a privacy interest in the information as it constitutes “confidential, commercial, or financial information” within the meaning of RSA 91-A:5.

Order at 1. In granting confidential treatment, the Commission did not rely on the unidentified “federal law” mentioned above, but on RSA 91-A:5, IV, the same statute cited in support of Liberty’s motion in this docket:

We agree with Aquarion that the information contained within the Study constitutes confidential, commercial information under RSA 91-A:5, IV. While the public may have some interest in the information (e.g., to aid in its understanding of the Commission's analysis in this proceeding), we find that the public's interest is outweighed by Aquarion's privacy interest and that disclosure of the Study could result in commercial harm or pose legitimate security risks.

Order at 3.

12. The *Aquarion Water* order cited a similar ruling in *New Hampshire Regulated Utilities*, Order No. 25,457 at 8 (Jan. 18, 2013). In that docket, which reviewed the electric utilities' response to the October 2011 Snowstorm, PSNH sought confidential treatment of "system circuit maps by Area Work Center" that were provided during discovery. Order 25,457 at 4. Similarly, Unitil sought protection of,

the circuit diagrams provided in response to data request 2-28, contending that the diagrams should be protected from public disclosure because they provide specific details concerning UES's energy infrastructure, including the precise location of key facilities and detailed information as to how the UES's distribution system is designed and configured.

*Id.* at 6. Unitil argued, among other things, that "extreme care must be exercised to protect sensitive information regarding the location of critical electric distribution infrastructure from unnecessary public disclosure, in this age of increased vigilance against potential acts of terrorism and sabotage." *Id.*

13. The Commission again granted confidential treatment of the PSNH and Unitil information described above pursuant to RSA 91-A:5, IV:

We further find that the system circuit maps submitted by PSNH and UES contain certain sensitive commercial information that warrants protection. We find that public disclosure of the information will not materially advance the public's understanding of the Commission's analysis of electric utility performance during the October 2011 snowstorm event and, moreover, could result in commercial harm or pose legitimate security risks.

*Id.* at 8. For the reasons stated in these two orders, and pursuant to the same statute, RSA 91-A:5, IV, Liberty similarly seeks confidential treatment of the Keene system map.

14. Staff noted in support of its objection that “PHMSA does not protect the location of transmission pipelines from public disclosure” and provided a link to the “National Pipeline Mapping Systems website, <https://www.npms.phmsa.dot.gov/>, which shows the location of gas transmission pipelines.” Staff noted that “this website can be accessed by government entities and the general public.” Objection at 3.

15. If one clicks on the website and opens the “public viewer” for a particular county at <https://pvnpm.phmsa.dot.gov/PublicViewer/>, the result is a Google Earth map with a colored line indicating the location of a pipeline, similar to the Keene map at issue here (although the PHMSA map is in “satellite” view whereas the Keene map is a line drawing). However, there is an important limitation to the PHMSA map. As one zooms in to better see where the pipelines travel, a “Warning” box appears that says,

Pipelines, LNG Plants and Breakout Tanks are only visible at zoom level 14 or less. Please zoom out if you wish to view these features.

That is, the software prevents one from zooming in far enough to see the detail that is evident in the Keene map. PHMSA presumably imposed this limitation for security reasons. In any event, the existence of the PHMSA map does not undercut the need for confidentiality of the Keene map – the level of detail is substantially different.

16. Therefore, as supplemented by this response, the Company asks the Commission to grant the *Motion for Protective Order Related to Discovery Responses* as applied to the

distribution system map that was produced in discovery as Confidential Attachment Clark 1-20 and to the same document that was introduced at hearing as Exhibit 5a.

Respectfully submitted,  
Liberty Utilities (EnergyNorth Natural Gas) Corp.  
By its Attorney,



Date: December 11, 2018

By: \_\_\_\_\_  
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Certificate of Service

I hereby certify that on December 11, 2018, a copy of this motion has been electronically forwarded to the service list.



By: \_\_\_\_\_  
Michael J. Sheehan

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

DG 18-092

Petition for a License to Construct and Maintain a Gas Pipeline Beneath the Ashuelot River in  
Keene

Clark Data Requests - Set 1

Date Request Received: 9/14/18  
Request No. Clark 1-20

Date of Response: 9/26/18  
Respondent: Andrew Mills

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**REQUEST:**

As discussed at the September 5, 2018 technical session in this matter, please provide a copy of the Keene city map that Randy Knepper utilized during the technical session, or an updated version of that map.

**RESPONSE:**

Please see Confidential Attachment Clark 1-20.

Confidential Attachment Clark 1-20, a map showing the location of the Company's facilities in Keene with many details of the Company's system, is confidential information that is protected from public disclosure pursuant to Puc 201.06(a)(17) (a utility's physical security plan is presumed confidential), RSA 91-A:5, IV ("confidential, commercial, or financial information"), and RSA 91-A:5, VI ("Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions"). Therefore, pursuant to that authority and Puc 203.08(d), the Company has a good faith basis to seek confidential treatment of this information and will submit a motion seeking confidential treatment prior to the final hearing in this docket.