

State of New Hampshire  
Public Utilities Commission

**Docket No. DG 20-105**

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

**Distribution Service Rate Case**

**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 data responses and confidential attachments 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 data responses and attachments listed below to be confidential without then filing a motion. 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.

Puc 203.08(d).

2. 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).

3. Liberty thus files this motion for confidential treatment of the following data responses and attachments, with the legal basis for confidentiality cited.

- a. iNATGAS

The following discovery responses and attachments are related to iNATGAS, a Liberty special contract customer, and contain iNATGAS's confidential customer information such as usage, gross revenues, lease payments made pursuant to the special contract, special contract pricing, amounts billed to iNATGAS and received from iNATGAS. This information is protected from disclosure, first, by RSA 363:38.

RSA 363:38, I defines "Individual customer data" as "information that is collected as part of providing electric, natural gas, water, or related services to a customer that can identify, singly or in combination, that specific customer, including the name, address, account number, quantity, characteristics, or time of consumption by the customer." And RSA 363:39, I(a) precludes disclosure of such information: "No service provider shall ... Share, disclose, or otherwise make accessible to any third party a customer's individual customer data ...."

The confidential terms of the iNATGAS special contract were granted confidential treatment by the Commission in Docket No. DG 14-091. *See* Transcript of the April 23, 2014, prehearing conference, at 12–13.

Confidential Attachment OCA 1-4.e.3.xlsx (usage, gross revenues, and lease payments made pursuant to the special contract);

Confidential Attachment Staff 1-8.xlsx (customer usage and lease payments);

Confidential Attachment Staff 1-8.1 (special contract pricing information);

Confidential Attachment Staff 1-8.xlsx (customer usage and lease payments);

Confidential Attachment Staff TS 1-2.b.1 (amounts billed to iNATGAS.);

Confidential Attachment Staff TS 1-2.b.2 (amounts paid directly by iNATGAS); and

Confidential Attachment Staff TS 3-1.a.xlsx (customer data).

b. Customer Information

In the following data responses, the Company seeks confidential treatment pursuant to RSA 363:38 and RSA 91-A:5, IV, which more generally protects “confidential” information.

Confidential Attachment OCA 1-35.xlsx provided a detailed monthly tabulation of transportation marketer imbalances, including confidential information about the customers served by those marketers.

Confidential Attachment Staff 1-4.d.2.xlsx and Confidential Attachment Staff 1-4.d.2.xlsx are Excel files that contain confidential information about the N.H. Department of Administrative Services, a governmental customer with whom Liberty entered a special contract.

Confidential Attachment Staff TS 3-8.b.1, Confidential Attachment Staff TS 3-8.b.2, Confidential Attachment Staff TS 3-8.b.3, Confidential Attachment Staff TS 3-8.b.4, and Confidential

Attachment Staff TS 3-8.c.xlsx are files with confidential information about customers in Pelham, which information was related to the Company's recovery of costs for its expansion into Pelham.

The response to Staff TS 2-1 contains confidential usage information by Calpine, the owner of the Granite Ridge power plant in Londonderry, a Liberty customer.

c. Third Party Information.

The following data responses contain confidential information of third parties, which information is proprietary and competitively sensitive, and thus qualifies as "confidential, commercial, or financial information" protected from disclosure by RSA 91-A:5, IV. The Commission has previously granted confidential treatment to proprietary consultant information. *Liberty Utilities (Granite State Electric) Corp.*, Order No. 26,005 at 15 (Apr. 12, 2017).

Confidential Attachments OCA 4-9.b.i.1 through OCA 4-9.b.i.3, and Confidential Attachments OCA 4-9.b.iii.1 through OCA 4-9.b.iii.5 are documents that contain the hourly rates of employees of Scott Madden, Inc. and the Analysis Group, which is competitively sensitive information of those consultants who assisted Liberty with various matters addressed in this docket.

Confidential Attachment Staff 4-5a through Confidential Attachment Staff 4-5l contain the contracts between Liberty and various consultants that performed work on the Granite Bridge project, and thus contain competitively sensitive information about those contractors, which qualifies as "confidential, commercial, or financial information" protected from disclosure by RSA 91-A:5, IV.

d. Confidential Liberty Information.

The next group of confidential responses included confidential information of Liberty and its corporate affiliates. The specific assertions of confidentiality follow a description of the particular information.

Confidential Attachment Staff 2-1 is an internal audit of certain Company activities. The Company has “a legitimate interest in maintaining the privacy of such reports so as to encourage candid internal review,” *Public Serv. Co. of N.H.*, Order No. 23,516 at 12 (June 23, 2000), and thus the report is “confidential, commercial, or financial information” protected from disclosure by RSA 91-A:5, IV.

Confidential Attachment Staff 3-2.1 contains a detailed assessment of the Keene propane-air facility, which study contains “confidential infrastructure information ‘including identification of areas of the distribution system in need of rehabilitation, repair, or replacement,’” which information is protected from disclosure under RSA 91-A:5 (“confidential, commercial, or financial information”). *Aquarion Water Co. of New Hampshire, Inc.*, Order No. 25,863 at 1 (Feb. 2, 2016), and is broadly within the scope of 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.” *See Unitil Energy Systems, Inc.*, Order No. 24,677 (October 6, 2006) (granting confidential treatment of “information regarding its electric distribution system that ‘disclose[d] detailed information as to how the distribution system is designed and configured, revealing key components and their locations [including] planning information as to how the system may be configured in the near future’”).

Confidential Attachment Staff 3-20.1.zip and Confidential Attachment Staff 3-20.2.pdf contain certain presentations made to banks and financial institutions by Liberty and its corporate affiliates. This is competitively sensitive financial information that is “confidential, commercial, or financial information” that is protected from disclosure by RSA 91-A:5, IV. Disclosure of such internal management reports that contain confidential financial and operational information and projections, in which the Company has significant privacy interests, would provide competitors with detailed information about internal processes causing competitive harm to the detriment of the Company and of its customers. *See* RSA 91-A:5, IV; *EnergyNorth Natural Gas*, Order No. 25,208 (Mar. 23, 2011); *Northern Utilities*, Order No. 25,289 (Nov. 18, 2011).

Confidential Attachment Staff 3-22.zip, Confidential Attachment Staff 3-23.2.zip contain confidential credit reports and rating agency reports for Liberty and its parent, which contain competitively sensitive, copyright protected, financial information that is

“confidential, commercial, or financial information” protected from disclosure by RSA 91-A:5, IV.

The next two discovery responses contain internal Liberty documents and reports related to how Liberty determines its salary ranges, incentive payments, and merit awards. The Company asserts and maintains confidentiality of this information and their disclosure would compromise the Company’s ability to attract and retain excellent employees. This competitively sensitive information thus qualifies as “confidential, commercial, or financial information” protected from disclosure by RSA 91-A:5, IV.

Confidential Attachment OCA 6-9.2 contain the details of the Company’s long term incentive plan, and

Confidential Attachment Staff TS 3-16, is the Company’s “2021 Merit Budget and Salary Structure.”

e. Employee Information

The following data responses include confidential employee information which constitutes confidential personnel information protected by RSA 91-A:5, IV (“Records pertaining to internal personnel practices [and] personnel ... files whose disclosure would constitute invasion of privacy”). Disclosure of such compensation information is well-recognized to constitute an invasion of privacy. *See Liberty Utiltieis (Granite State Electric) Corp.*, Order No. 26,271 (July 10, 2019).

The response to Staff 3-64 contains wages of individual Keene employees;

The response to Staff 3-67 contains the names of employees who participated in the supplemental retirement program; and

Confidential Attachment Staff TS 3-15.xlsx contains a list of the salaries for specific job positions, from which one could determine the compensation of specific employees.

f. TGP Pricing

Confidential Attachment Staff 4-3 and the response to OCA 5-6 contain the confidential pricing estimates from Tennessee Gas Pipeline (TGP) to upgrade the Concord Lateral, which information is protected from disclosure by RSA 91-A:5, IV, as “confidential, commercial, or financial information” of a third party. TGP provided this information to Liberty under the terms of a non-disclosure agreement which requires the Company to maintain its confidentiality. The Commission granted confidential treatment of similar information in Order No. 26,166 (Aug. 1, 2018).

g. Third Party Commodity Pricing

Finally, Confidential Attachment Staff 5-7.xlsx contains third party CNG pricing and related information responsive to Company RFPs, which information is “confidential, commercial, or financial information” that is protected from disclosure by RSA 91-A:5, IV, and presumed to be confidential in cost of gas proceedings pursuant to Puc 201.06(a)(11).

4. 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.

5. 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).

6. After review of the discovery responses and 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 data responses and 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: June 5, 2021

By:

\_\_\_\_\_  
Michael J. Sheehan, Senior Counsel #6590  
116 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 June 5, 2021, a copy of this Motion has been electronically forwarded to the service list in this docket.



\_\_\_\_\_  
Michael J. Sheehan