

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 20-105

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

Petition for Permanent Rates

**Motion for Confidential Treatment of Consultants' Hourly Rates**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty, through counsel, respectfully moves the Commission pursuant to Puc 203.08 and RSA 91-A:5 to grant confidential treatment of the hourly rates charged by the Company's consultants in this matter, and other confidential information, contained in the attachments to the *Motion for Recovery of Rate Case Expenses* ("Motion") filed this date, the disclosure of which would constitute an invasion of privacy.

In support of this motion, Liberty states as follows:

1. Puc 203.08(a) states that the Commission shall "issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law."
2. A motion requesting such relief must contain the following:
  - (1) The documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought;
  - (2) Specific reference to the statutory or common law support for confidentiality;  
and
  - (3) A detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.

Puc 203.08(b).

3. RSA 91-A:5, IV exempts certain records from public disclosure, including “[r]ecords pertaining to ... confidential, commercial, or financial information ... and other files whose disclosure would constitute invasion of privacy.”
4. The Commission applies a three-step analysis to determine whether information should be protected from public disclosure. *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008); *Public Service Company of New Hampshire*, Order No. 25,313 at 11-12 (Dec. 30, 2011).
5. The first step of the *Lambert* analysis is to determine if there is a privacy interest that would be invaded by disclosure. If such an interest is at stake, the second step is to determine if there is a public interest in disclosure. The public interest arises from the need to inform the public of the conduct and activities of its government. The final step of the *Lambert* analysis is to weigh the privacy interests against the need to inform the public. If the information does not serve that public purpose, or if the privacy interest outweighs the public interest, then disclosure is not warranted. *Electric Distribution Utilities*, Order No. 25,811 (Sept. 9, 2015); *Public Service Company of New Hampshire*, Order 25,167 at 3–4 (Nov. 9, 2010).
6. As required by Puc 1905.03, Liberty has attached to the Motion information supporting the rate case expenses incurred in this proceeding, including copies of invoices, responses to RFPs, and contracts. Specifically, the following providers assert confidentiality in their hourly billing rates: Concentric (Attachments 1 and 13), FTI Consulting (Attachments 2 and 15), Keegan Werlin (Attachments 3 and 17), and ScottMadden (Attachments 4 and

18).<sup>1</sup> Those documents from consultants that assert confidentiality in their billing rates have been properly shaded (confidential version) or redacted (public version). Note, however, that some of the original documents indicate they are “confidential”, but for which Liberty is not seeking confidential treatment. The Company seeks confidential treatment only for those documents marked “confidential” in the Liberty-applied header in the upper right-hand corner of the documents.

7. Together, these confidential documents shall be referred to as the “Confidential Attachments.”
8. The consultants’ billing rates, information from which one could calculate the billing rates,<sup>2</sup> tax identification numbers, and invoice numbers should be granted confidential treatment because, as discussed below, the consultants have privacy interests in this information that would be invaded by public disclosure, and because those privacy interests outweighs the public interest in disclosure of those details. Public disclosure of the Confidential Attachments is also not necessary to inform the public of the conduct and activities of the Commission. Therefore, disclosure is not warranted. *Electric Distribution Utilities*, Order No. 25,811 at 5 (Sept. 9, 2015).
9. The consultants have privacy interests in their hourly rates. The rates included in the Confidential Attachments were the result of competitive bid processes and negotiations

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<sup>1</sup> ScottMadden also asserts confidentiality in their federal tax identification number and invoice numbers, which discloses the number of projects they have performed for particular clients.

<sup>2</sup> Some invoices have entries that include consultant’s hourly rate, hours spent on the task, and the total amount for that entry (e.g., \$100/hour, 2.5 hours spent, for a daily total of \$250). In this case, both the hourly rate and the hours spent are redacted, otherwise one could calculate the hourly rate (\$100) from the hours spent and the total amount (\$250 / 2.5 hours).

between the Company and the consultants. The consultants consider their hourly rates to be competitively sensitive information, the disclosure of which would cause them harm as competitors could use that knowledge in future RFPs, and existing clients could use the knowledge to renegotiate their contracts.

10. The Company also has an interest in keeping the hourly rates confidential. If the Commission allowed disclosure of the consultants' billing rates in this case, the Company would likely have substantial difficulty contracting in the future as potential counterparties would worry about their confidential pricing being disclosed. For those counterparties who do negotiate with the Company, they may not offer the Company their best pricing for fear that it would be disclosed to others. As a result, the disclosure of this information would have a chilling effect on the Company's ability to attract contract partners and to obtain reasonable and attractive pricing for the its customers.
11. The Company acknowledges that there is some public interest in the billing rates. However, that interest is balanced by the quality of the information which would be made public. The public will have access to the total amount billed and, in most cases, the total hours spent. Also note that the Confidential Attachments were provided to the Department of Energy and the Office of the Consumer Advocate, who have the public interest in mind when they scrutinize the confidential details of the billings.
12. In balancing the substantial privacy interests of the Company and its consultants against the relatively minor public interest in the specific hourly rates, the Commission should find that the balance tips in favor of granting protection to the information marked in the Confidential Attachments.

13. The Commission has previously protected similar billing information, finding the public’s interest in disclosure is outweighed by the “substantial harm to the competitive positions” of the Company and its vendors, in addition to the effect on the Company’s customers in higher costs. *Liberty Utilities Corp.*, Order No. 26,280 at 4–5 (Aug. 1, 2019) (protecting negotiated pricing terms contained in gas supply contract); *Pennichuck East Utility, Inc.*, Order No. 26,222 (Feb. 26, 2019) (protecting negotiated pricing and billing rates of utility’s attorney); *Public Serv. Co. of N.H.*, Order No. 26,057 at 10 (Sept. 19, 2017) (protecting bid prices in responses to an RFP).
14. With respect to the tax identification number, there is no legitimate public interest in that information. *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 25,690 at 4 (July 9, 2014).

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant this motion and issue an order protecting from disclosure the information marked as confidential in the attachments to the Company’s Motion for Recovery of Rate Case Expenses; and;
- B. Grant such further relief as is just and equitable.

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

By its Attorney,



Date: August 30, 2021

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

I hereby certify that on August 30, 2021, a copy of this Motion has been forwarded to the service list.

A handwritten signature in cursive script, appearing to read "M. Sheehan".

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Michael J. Sheehan