

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DOCKET NO. DG 21-___

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
D/B/A LIBERTY

Motion for Protective Order and Confidential Treatment

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (“Liberty”), through counsel, respectfully moves the Commission pursuant to Puc 203.08 for a protective order precluding the disclosure of confidential pricing estimates from Tennessee Gas Pipeline Company (“TGP”) and estimated costs for potential Liberty capital projects, which confidential information is contained in the *Direct Testimony of Francisco C. DaFonte and William R. Killeen* (the DaFonte-Killeen Testimony), also filed this date.

In support of this motion, Liberty represents as follows:

1. The Dafonte-Killeen Testimony presents the Company’s request for Commission approval of a firm transportation agreement with TGP.
2. The DaFonte-Killeen Testimony includes confidential TGP pricing that the Commission has previously ruled to be confidential in Order No. 26,166 (Aug. 1, 2018), similar confidential pricing information that TGP provided after the date of Order No. 26,166, and other information from which one could calculate, or “back in to,” the confidential TGP pricing information. The DaFonte-Killeen Testimony also includes projected costs for future Liberty projects, which estimates should remain confidential to protect the viability of future competitive bid processes.

3. The confidential information appears in the DaFonte-Killeen Testimony at Bates 20–26, and in Attachment FCD-WRK-2.

4. Applying the three factor *Belknap*¹ test, the Commission ruled to be confidential “the estimated cost to upgrade the Concord Lateral pipeline” that were included in Liberty’s initial filing in Docket No. DG 17-048. Order No. 26,166 at 2, 6. TGP provided these cost estimates in the format of dollars per dekatherm (\$/Dth), thus Order No. 26,122 granted confidential treatment to TGP pricing in statements such as the following: “The daily rates provided by Tennessee to Liberty for expanding the TGP Concord Lateral ranged from ■ to ■ per Dth.”

5. The DaFonte-Killeen Testimony includes references to the very same TGP pricing estimates addressed in Order No. 26,122. Liberty thus asks the Commission to similarly recognize the confidentiality of that information in the DaFonte-Killeen Testimony.

6. The DaFonte-Killeen Testimony also includes updated pricing estimates that TGP provided to Liberty after the Commission issued Order No. 26,122.

7. This additional TGP pricing is from the same party (TGP), is expressed in the same \$/Dth format, is for the same services (the right to transport natural gas on TGP’s Concord Lateral), and is thus similar confidential third party pricing that warrants confidential treatment.

8. The Company asks that the Commission apply the rationale and finding in Order No. 26,166 and similarly find to be confidential the subsequent TGP pricing information as contained in the DaFonte-Killeen Testimony, and other figures from which one could calculate the

¹ *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008).

confidential pricing.

9. The Company also seeks confidential treatment of its estimated project costs which, if disclosed, would impair the Company's ability to receive competitive pricing for those projects.

10. Liberty's request for confidential treatment of the project cost estimates is consistent with the requirements of New Hampshire's Right to Know law, which expressly exempts from public disclosure any records pertaining to "confidential, commercial or financial information." RSA 91-A:5, IV; see *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). Application of this exemption requires "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." Order No. 25,014 at (Sept. 22, 2009).

11. The determination of whether to grant a motion for confidential treatment involves a balancing of the public's interest in full disclosure with the countervailing commercial or private interests for non-disclosure.

12. Puc 203.08 recognizes RSA 91-A:5, IV as a basis to assert a privacy interest in "confidential commercial or financial information" and to seek protection from public disclosure pursuant to an order of the Commission.

13. The Commission has previously weighed the interests in keeping projected costs confidential against the public interests in disclosure in the context of a future RFP, and ruled in favor of confidentiality. "The disclosure of project cost and savings information has the potential to negatively impact the results of the City of Concord's competitive solicitation for an LED conversion vendor." Order No. 26,422 at 4 (Nov. 6, 2020).

14. Applying the three-step *Belknap* analysis, the Company asks the Commission to grant confidential treatment for the project estimates.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment; and
- B. Grant such other relief as is just and equitable.

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



Date: January 20, 2021

By: _____
Michael J. Sheehan, Esq. #6590
116 North Main Street
Concord, NH 03301
Telephone (603) 724-2135
Michael.Sheehan@libertyutilites.com



By: _____
Daniel P. Venora
Jessica Buno Ralston, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, MA 02110
(617) 951-1400
dvenora@keeganwerlin.com
jralston@keeganwerlin.com

Certificate of Service

I certify that on January 20, 2021, a copy of this Motion has been electronically forwarded to the Office of the Consumer Advocate.

A handwritten signature in black ink, appearing to read "M. Sheehan", written in a cursive style.

Michael J. Sheehan