

State of New Hampshire
Public Utilities Commission

Docket No. DG 21-008

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

**Petition for Approval of a Firm Transportation Agreement with
Tennessee Gas Pipeline Company, LLC**

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.¹ 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.

¹ Attached are the Company's data responses containing the assertions of confidentiality and supporting authority..

Puc 203.08(d). 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).

2. Liberty thus files this motion for confidential treatment of the following data responses and attachments.

a. TGP Pricing

OCA TS 1-2, Confidential Attachment OCA 1-2.xlsm, Confidential Attachment OCA TS 1-3.xlsm, and Confidential Attachment OCA TS 1-4.xlsm (Attachment at Bates 007-012) 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 the same and similar information in Order No. 26,166 (Aug. 1, 2018) and Order No. 26,505 (July 30, 2021).

b. Customer Information

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

Staff TS 1-6 (Bates 013) and Confidential Attachment PLAN 1-10.xlsx (Baes 014) contains the usage and payment history of the Granite Ridge power plant, a Liberty customer.

Staff TS 1-7 (Bates 015) contains the names of the customers who called the Company with complaints related to the injection of propane into the distribution system.

Staff 1-3 (Bates 017) contains confidential terms of the special contract between Liberty and the Granite Ridge/Calpine power plant. Granite Ridge has a privacy interest in this pricing information, which information was granted confidential treatment in the docket approving that special contract through Order No. 23,661 (Mar. 23, 2001).

c. Consultant's Proprietary Model.

Confidential Attachments OCA 1-14.b.xlsx (Bates 019) is a proprietary model prepared by Liberty's consultant, which information is 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 similar proprietary consultant models. *Liberty Utilities (Granite State Electric) Corp.*, Order No. 26,005 at 15 (Apr. 12, 2017); *Northern Utilities*, Order No. 25,251 (July 18, 2011).

d. Gas Supply Contract Pricing.

Staff 1-2 (Bates 020) and CLF 2-3 (Bates 022) contain the pricing Liberty pays under a negotiated capacity contract with TGP. "The Commission has previously determined that information relating to the terms of gas supply agreements negotiated by a jurisdictional gas distribution company constitutes sensitive commercial information that warrants confidential treatment. The Commission has recognized that this kind of

information is sensitive commercial information in a competitive market.” Order No. 26,166 at 5-6 (Aug. 1, 2018) (citations omitted).

e. Confidential Liberty Information.

Finally, Confidential Attachment OCA 1-13 (Bates 024) contains the Company’s construction cost estimates for the “on system enhancements” that are discussed in Liberty’s testimony. Liberty filed a motion for confidential treatment of this same information with its initial filing in this docket. That motion states:

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).

Motion for Confidential Treatment, filed Jan. 20, 2021.

3. 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 and in the attachments.
4. 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).

5. 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: October 5, 2021

By:

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Certificate of Service

I hereby certify that on October 5, 2021, a copy of this Motion has been electronically forwarded to the service list in this docket.

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

Michael J. Sheehan