

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 23-067

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

Request for Change in Distribution Rates

**Motion for Confidential Treatment**

Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty (“Liberty”), through counsel, respectfully moves the Commission pursuant to RSA 91-A:5 and Puc 203.08 to grant confidential treatment of Confidential Attachment DOE 1-1.22, an Excel file that contains proprietary information of a third party.

In support of this motion, Liberty states as follows:

1. In Order No. 26,877 at 6 (Aug. 25, 2023), the Commission stated that Liberty “shall provide live spreadsheets for all the schedules and models in its filing, with all supporting work papers ... on or before September 15, 2023.”
2. The Company has this date filed the requested live spreadsheets, labeled Attachment DOE 1-1.1 through Attachment DOE 1-1.22, including Confidential Attachment DOE 1-1.22.
3. The spreadsheet labelled Confidential Attachment DOE 1-1.22 contains confidential information for which the Company now seeks a protective order.
4. Confidential Attachment DOE 1-1.22 contains a listing of the returns on equity (“ROE”) that have been approved by commissions across the country in nearly 1,000 orders over the past 13 years and the graphic representation of those data points. S&P Global Market

Intelligence Services (“S&P”) compiled this data and provided it to Liberty’s consultant through a subscription service. A condition of the subscription is that the information must remain confidential to preserve the value of S&P’s product as S&P considers the database to be their proprietary work product. S&P precludes its customers from providing the data to others unless confidentiality can be assured.<sup>1</sup>

5. Liberty thus seeks confidential treatment of Attachment DOE 1-1.22 pursuant to the procedure outlined in Puc 203.08 and pursuant to the exemption from public disclosure of RSA 91-A:5, IV, which protects “confidential” and “commercial” information.
6. Pursuant to *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), the Commission applies a three-step analysis to determine whether information should be protected from public disclosure. *See, e.g., Public Serv. Co. of N.H.*, Order No. 25,313 at 11-12 (Dec. 30, 2011).
7. The first step under *Lambert* is to determine if there is a privacy interest at stake that would be invaded by disclosure. If so, the second step is to determine if there is a public interest in disclosure, that is, whether disclosure would inform the public of the conduct and activities of its government. Otherwise, public disclosure is not warranted. *Public Serv.*

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<sup>1</sup> The following is an excerpt of the language from the consultant’s Master Subscription Agreement with S&P Global Market Intelligence Services:

2.3. If in connection with Subscriber's provision of consulting and/or expert witness services to its customer in an arbitration, regulatory or litigation proceeding Subscriber is required by law or the applicable rules of civil procedure to disclose any information and/or data from the Services considered and/or evaluated by Subscriber in support of the analyses contained in the Subscriber Materials, including any Output or Derived Data (as hereinafter defined), Subscriber shall be permitted to disclose such information and/or data provided that Subscriber uses reasonable efforts to protect such data from further disclosure outside the context of the specific arbitration, regulatory or litigation proceeding.

*Co. of N.H.*, Order No. 25,167 at 3 (Nov. 9, 2010). If these first two steps are met, the Commission must then weigh the public interest benefits of disclosure against the harm disclosure may cause and determine which outweighs the other. *Lambert*, 157 N.H. at 385; Order No. 25,167 at 3-4.

8. Applying this test here, Liberty can demonstrate, first, that there are privacy interests in the attachment.

9. Commission rules incorporate RSA 91-A:5 as the authority under which parties may seek confidential treatment:

The commission shall upon motion 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 ....

Puc 203.08(a). As stated above, RSA 91-A:5, IV exempts from public disclosure records that constitute “confidential, commercial, or financial information.”

10. The Commission has often recognized that it RSA 91-A:5, IV confers a privacy interest in competitively sensitive information carry as “confidential, commercial, or financial information.” *See Consolidated Communications Holdings*, Order No. 26,040 at 9 (July 11, 2017) (Commission granted confidential treatment of “information [that] represents non-public, commercially-sensitive financial and operational information of companies engaged in a competitive industry that is subject to limited state regulation in New Hampshire”).

11. Liberty has thus established that there are statutorily recognized privacy interests in the confidential attachment, satisfying the first step of the *Lambert* analysis.

12. The second step in the *Lambert* analysis is to determine whether there is a public interest in disclosure of the confidential information; that is, whether releasing the information lends insight into the workings of the Commission as it relates to this case. The Company acknowledges some public interest in the S&P data as it may play a role in how the Commission determines an appropriate ROE for Liberty.
13. However, to the extent there is some level of public interest in the details of the attachment at issue here, the third step of the *Lambert* analysis asks whether those interests in transparency outweigh the substantial harms that would result from disclosure. Liberty submits that the substantial harm from disclosure outweighs the modest benefits of disclosure.
14. Disclosure of the S&P data would cause S&P economic harm because others could access S&P's work product without paying for it. S&P's compilation of the approved ROEs from nearly 1,000 rate cases was presumably expensive to compile and update, justifying the subscription fees. Making that information public could deprive S&P of compensation for its work. And the public interest in transparency could adequately be satisfied by a summary of the S&P information and how the Commission used that information, to the extent the Commission relies on it when approving Liberty's ROE.
15. Given the harm that disclosure could cause S&P and the ability of the Commission to convey to the public any role that the S&P data played in its analysis of the appropriate ROE for Liberty, the *Lambert* balancing test favors a finding that the S&P data should be granted confidential treatment.

16. For these reasons, Liberty asks that the Commission issue a protective order preventing the public disclosure of Confidential Attachment DOE 1-1.22.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant this motion and order confidential treatment of Confidential Attachment DOE 1-1.22; 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: September 11, 2023

By:

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Certificate of Service

I hereby certify that on September 11, 2023, I electronically sent a copy of this motion to the service list in this docket.



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Michael J. Sheehan