

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Docket No. DG 17-XXX

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

**Petition to Approve Firm Supply and Transportation Agreements and the
Granite Bridge Project**

Motion for Protective Order

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, through counsel, respectfully moves the Commission pursuant to Puc 203.08 for a protective order precluding the disclosure of certain commercially sensitive information contained in pre-filed testimony and attachments that accompany the petition filed in this docket.

In support of this motion, Liberty represents as follows:

1. EnergyNorth's filing seeks Commission approval of a delivered supply contract with ENGIE Gas & LNG, LLC ("ENGIE"), a precedent agreement for firm transportation capacity with Portland Natural Gas Transmission System ("PNGTS"), and the decision to proceed with the Granite Bridge Project, which consists of an in-state pipeline along State Route 101 and an on-system liquefied natural gas ("LNG") facility.

2. The filing contains the following categories of information for which the Company seeks confidential treatment (and which has been shaded in the Company's confidential filings and redacted in its public filing):

- a. Pricing and delivery terms of proposed and existing supply and capacity contracts, which are contained within Attachments WRK-JMS-4, WRK-JMS-5, WRK-JMS-6, WRK-JMS-7, WRK-JMS-8, and WRK-JMS-9

(SENDOUT® runs); SLF-FCD-1 (ENGIE contract); and SLF-FCD-2 (PNGTS contract);

- b. Estimated costs for Tennessee Gas Pipeline to upgrade the Concord Lateral (Killeen/Stephens testimony at 64-65);
- c. Regulatory approval dates and other sensitive contract terms (Fleck/DaFonte testimony at 8, 10; Killeen/Stephens testimony at 95, 98; Attachments SLF-FCD-1 and SLF-FCD-2);
- d. Cost calculations for the Granite Bridge Project (Lyons testimony at 3, 6, 15-22; Killeen/Stephens testimony at 65, 83, 101-102; Attachments TSL-2, TSL-3, and TSL-4); and
- e. Reasons for choosing ENGIE over another supplier (Killeen/Stephens testimony at 84-85, 95-98; Attachments SLF-FCD-1 and SLF-FCD-2).

3. 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).

4. The first step is to determine if there is a privacy interest at stake that would be invaded by the disclosure. If so, the second step is to determine if there is a public interest in disclosure because disclosure that informs the public of the conduct and activities of its government is generally in the public interest. Otherwise, public disclosure is not warranted. *Public Serv. Co. of N.H.*, Order 25,167 at 3 (Nov. 9, 2010). If these first two steps are met, the Commission then weighs the importance of keeping the record public with the harm that may flow from disclosure. *Id.* at 3-4.

5. Applying this three part test here, EnergyNorth satisfies the first step because there are privacy interests in the redacted information described above. Several sources support the Company's assertion of confidentiality.

6. First, the agreement with PNGTS contains an express confidentiality provision. Section 23 provides: "This Precedent Agreement and the terms set forth herein are confidential and the Parties agree not to disclose such terms other than as otherwise set forth in this Precedent Agreement and as required by applicable laws, regulations or any securities exchange." Attachment SLF-FCD-2. Although Section 23 allows the Company to disclose the terms of the agreement to obtain regulatory approval, it does not provide for wholesale public release of all of the terms and conditions of the agreement.

7. Second, 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). RSA 91-A:5, IV, specifically exempts from public disclosure records that constitute "confidential, commercial, or financial information." The Commission has regularly ruled that the information at issue here constitutes such "confidential, commercial, or financial information." Order No. 25,861 at 4-6 (Jan. 22, 2016).

8. Third, pricing terms and special delivery terms of the capacity and supply arrangements in the proposed contracts, in existing contracts, and other financial terms are presumed to be confidential in cost of gas proceedings pursuant to Puc 201.06(a)(11).¹ Although

¹ (a) The following shall be the routine filings to which the procedure established by Puc 201.06 and Puc 201.07 applies ...

(11) In cost of gas proceedings:

that rule does not apply to this proceeding, it is an explicit acknowledgment that terms in gas supply contracts warrant confidential treatment in the first instance.

9. Fourth, the Company and its counterparties have an expectation of privacy in key terms included in supply and capacity agreements and infrastructure contracts based on existing Commission practice. *See* Order No. 25,861.

10. In light of the Commission's prior treatment of similar information to be confidential, the Company has a reasonable expectation of privacy that the information at issue here will also be accorded confidential treatment. Using the same subparagraphs as in paragraph 2 above, the reasons are as follows:

- a. The pricing and delivery terms of proposed and existing supply and capacity contracts are confidential under: (1) the confidentiality language of the PNGTS contract; (2) the protection of "confidential, commercial, or financial information" pursuant to RSA 91-A:5, IV; (3) the concepts of confidentiality embodied in Puc 201.06(a)(11); and (4) the general expectation of privacy arising from the above authorities and prior commission orders.
- b. The estimated costs for Tennessee Gas Pipeline to upgrade the Concord Lateral are confidential under RSA 91-A:5, IV, as "confidential, commercial, or financial

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- a. Supplier commodity pricing information related to the unit volumetric and demand cost;
 - b. Pricing and delivery special terms of supply agreements;
 - c. Pricing and special terms for storage lease agreements;
 - d. Natural gas or propane costs and availability relating to hedging;
 - e. Special terms for hedged natural gas or propane contracts;
 - f. Supply commodity cost information specific to individual suppliers in supply and demand forecasts; and
 - g. Responses to data requests related to a. through f. above;

information” of a third party. Also, TGP provided this estimate with the understanding that the Company would maintain its confidentiality.

- c. Regulatory approval dates and other sensitive contract terms also enjoy protection under the “confidential, commercial, or financial information” language of RSA 91-A:5, IV. The few terms redacted from the identified documents fall squarely into this exemption as truly sensitive commercial information, the disclosure of which would cause competitive harm to the Company and its counterparties. The redacted language in the PNGTS contract is also confidential by that agreement’s Section 23. The Commission granted confidential treatment to similar contract timing language in Order No. 25,861 (Jan. 22, 2016) (*see* Redacted Testimony of Francisco DaFonte in that docket, DG 15-494, at Bates 007, 015).
- d. The cost calculations for the Granite Bridge Project (the levelized cost analyses used to compare the Granite Bridge Project costs with tradition pipeline capacity costs, the annualized costs used to calculate the levelized costs, and the potential revenue requirement figures drawn from these calculations), are also confidential under RSA 91-A:5, IV, the principles supporting Puc 201.06(a)(11), and the general expectation of privacy arising from the above authorities and prior commission orders. *See Testimony of Chico DaFonte* in Docket No. DG 14-380, where the ultimate costs to EnergyNorth of the contract being reviewed were redacted, which request for confidentiality the Commission later approved by Hearings Officer Report (Feb. 13, 2015) and confirming Secretarial Letter (Feb. 19, 2015); *see also* Order No. 25,861 (Jan. 22, 2016).

The annual revenue requirement is akin to what a pipeline or supplier would charge for a fixed annual cost for their service. This information has been held to be confidential in prior proceedings. If this information is made public and the Granite Bridge Project is not built for some reason, disclosure would effectively have established a floor price for any supplies that the Company may seek as an alternative. That is, if such future suppliers knew the annual costs of the Granite Bridge Project, which costs the Company stated were the least cost alternatives, then these future suppliers could use that information to form the minimum of what they would charge, and would then propose a price in excess of that cost. Absent such knowledge, these future suppliers could very well offer EnergyNorth a lower price. The Company thus needs to keep this information confidential.

- e. Finally, the reasons EnergyNorth chose ENGIE over another supplier are confidential pursuant to RSA 91-A:5, IV and the reasons behind Puc 201.06(a)(15), because the confidential testimony reflects a balancing and comparison of competing confidential contract terms and the reasons EnergyNorth chose ENGIE.

11. Since the redacted information is confidential, the second step in the Commission's analysis is to consider whether there is a public interest in disclosure of the information, that is, whether releasing the information lends any insight into the workings of government as it relates to this case. Here, public disclosure of the redacted information would not materially advance the public's understanding of the Commission's analysis in this proceeding. The public's interest is in seeing the Commission's review of the proposed contracts and project and why they are in the public interest. The Company's expectation is that the Commission's review of the petition will

be transparent and publicly available. Withholding from public view the few pieces of information that is the subject of this motion will not impair that transparency. The Commission can, and often has in the past, couch its public filings and orders in a manner that protects confidential material while disclosing the full scope of its review and analysis. The Commission can readily follow that path here. Thus, there is no public interest in disclosure of the limited information described above.

12. Finally, even if one were to conclude that there is a public interest in disclosure, the harm that could occur as a result of that disclosure is outweighed by the privacy interests at stake. In the event that the Company does not obtain Commission approval for the proposed contracts and Granite Bridge Project, the Company will be seeking alternative arrangements. It would be highly disadvantageous to the Company's negotiating position if future suppliers were aware of, for example, the pricing and other key terms on which the Company was willing to conduct business as disclosed here. The same competitive disadvantage for the Company or for its counterparties exists as to the other information at issue in this motion. That harm would ultimately accrue to the Company's customers since the costs associated with any future arrangements are charged to customers. Thus, the Company submits that there is an insufficient public interest in disclosing these key contract terms to outweigh the need for confidentiality.

13. The confidential treatment of the information at issue here is consistent with the Company's prior requests for confidential treatment. In the docket that reviewed a prior EnergyNorth capacity contract, the Commission stated: "We agree that EnergyNorth has a privacy interest in the pricing, delivery, and financial information redacted in its original filing. Because this is the type of information we will consider in this docket, there is public interest in its disclosure. However, we conclude that any public interest in disclosure is outweighed by EnergyNorth's interest in privacy." Order No. 25,861 at 5-6 (Jan. 22, 2016). And in an earlier

and related filing, the Commission again granted confidential treatment of similar information. See Docket No. DG 14-380 (Feb. 3, 2015, Hearing Examiner Report at 3, as confirmed by the Commission via secretarial letter of Feb. 19, 2015).

14. For these reasons, EnergyNorth asks that the Commission issue a protective order preventing the public disclosure of the information described above and which is shaded or redacted in the Company's filing, as appropriate.

WHEREFORE, EnergyNorth 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 Utilities

By its Attorney,



Date: December 21, 2017

By: _____
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Certificate of Service

I hereby certify that on December 21, 2017, a copy of this Motion has been forwarded to the Office of Consumer Advocate.



Michael J. Sheehan