

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 21-xxx

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

Petition for Approval of a Renewable Natural Gas Supply and Transportation Agreement

Motion for Protective Order and Confidential Treatment

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty, through counsel, respectfully moves the Commission pursuant to Puc 203.08, RSA 91-A:5, IV, and RSA 363:38, for a protective order precluding the disclosure of protected customer information contained in three letters of intent (“LOI”) and in a schedule that contains protected customer information related to the three LOI customers, all of which documents are attached to the Direct Testimony of William J. Clark and Mark Stevens.

In support of this motion, Liberty represents as follows:

1. Attached to the testimony filed this date are three LOIs signed by large commercial customers who wish to buy from Liberty the renewable natural gas (“RNG”) that Liberty will purchase under the terms of the RNG Agreement at issue in this docket. See Confidential Attachments WJC/MRS-5, WJC/MRS-6, and WJC/MRS-7. Also attached to the testimony is a schedule that includes the projected volumes of RNG that will be purchased by these same LOI Customers. See Confidential Attachment WJC/MRS-8.
2. These attachments contain the customers’ names, addresses, employee contacts, and the amount of RNG that they intend to purchase from Liberty.

3. This confidential information, which has been appropriately redacted or shaded, falls with the definition of “individual customer data” that is specifically protected by RSA 363:38: “No service provider shall ... [s]hare, disclose, or otherwise make accessible to any third party a customer's individual customer data.” The statute defines “individual customer data” as “information that ... can identify, singly or in combination, that specific customer, including the name, address, account number, quantity, characteristics, or time of consumption by the customer.” RSA 363:37, I.
4. The information is also more generally protected by RSA 91-A:5, IV, which excludes “confidential, commercial, or financial information” from the general requirement that state agencies make public the records in their possession.
5. 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).
6. 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.
7. Liberty satisfies the first step because there are privacy interests in the redacted information described above. RSA 363:38 specifically protects utility customer

information, and RSA 91-A:5, IV generally protects such information from disclosure.

And this privacy interest is buttressed by language in the LOIs contain a specific promise by Liberty to keep the LOI Customer information confidential.

8. After finding the identified information to be confidential, the second step is for the Commission 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 RNG Agreement to determine whether it is in the public interest. The Company's expectation is that the Commission's review of the petition, with the financial and operational issues raised, will be transparent and publicly available. The customer-specific information that is the subject of this motion, however, is not central to the Commission's review of the RNG Agreement. It is sufficient that public know there are three large customers who have agreed to buy approximately 65 percent of the RNG that Liberty will purchase from RUDARPA under the RNG Agreement. Withholding from public view the specific details of this information 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.
9. Finally, even if the Commission concludes 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. Disclosure of the customer information could cause the LOI Customers competitive harm and would violate the clear legislative intent to protect such information. Given the strong statutory language and Commission precedent protecting customer information of nearly all types, and certainly including their identity and usage at issue here, the harm of disclosure clearly outweighs any benefit. As the Commission stated in another docket:

While the public may have some interest in the information (e.g., to aid in its understanding of the Commission's analysis in this proceeding), we find that the public's interest is outweighed by Liberty's, TGP's, and its potential customers' privacy interests, and that disclosure of this information could result in commercial harm. In the case of the identities of potential customers, disclosure could harm the competitive position of Liberty insofar as competing energy suppliers could attempt to "poach" these potentially valuable anchor, and non-anchor customers.

Liberty Utilities (EnergyNorth Natural Gas) Corp., Order No. 25,987 at 9 (Feb. 8, 2017).

10. For these reasons, Liberty asks that the Commission issue a protective order preventing the public disclosure of the confidential customer information described above and which is shaded or redacted in the confidential attachments.

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

By its Attorney,



Date: March 4, 2021

By:

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Certificate of Service

I hereby certify that on March 4, 2021, a copy of this Motion has been forwarded to the Office of the Consumer Advocate.



Michael J. Sheehan