

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 14-155

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.

Joint Petition to Approve Sale of New Hampshire Gas Corporation

Order Granting Petition to Intervene and Motion for Confidential Treatment

ORDER NO. 25,690

July 9, 2014

In this order, the Commission grants HotZero's petition to intervene, limited to certain issues, and grants Iberdrola's motion for confidential treatment of information related to a superior court settlement agreement.

I. PROCEDURAL HISTORY

Liberty Utilities (EnergyNorth Natural Gas) Corp. (EnergyNorth) and Iberdrola USA Enterprises, Inc. (Iberdrola), filed a joint petition to approve EnergyNorth's purchase of New Hampshire Gas Corporation (NH Gas) from Iberdrola. EnergyNorth is a public utility that provides retail gas service to approximately 86,000 customers in 31 communities throughout New Hampshire. Iberdrola is a Maine holding company and a wholly-owned subsidiary of Iberdrola, S.A. Iberdrola provides natural gas service to customers in New England and New York through a number of subsidiaries, including NH Gas. NH Gas is a public utility that distributes propane air gas to approximately 1,200 customers in Keene.

The Office of the Consumer Advocate (OCA) filed a letter of participation on behalf of residential ratepayers consistent with RSA 363:28.

This order addresses two requests. First, Iberdrola filed a Motion for Protective Order and Confidential Treatment regarding terms of a superior court settlement agreement attached to

the joint petition and referenced in testimony. Second, HotZero, LLC, filed a petition to intervene.

A hearings examiner conducted the prehearing conference in this matter and recommended that the Commission grant the motion for confidential treatment. The hearings examiner did not make a recommendation on HotZero's intervention request.

II. POSITIONS OF THE PARTIES AND STAFF

A. Joint Petitioners

Iberdrola seeks confidential treatment of two provisions of a settlement agreement that resolved superior court litigation between NH Gas and Keene Propane Corporation. Iberdrola also seeks confidential treatment of a reference in testimony to one of those settlement provisions. The first provision is the amount NH Gas agreed to pay Keene Propane to resolve the dispute. Motion for Protective Order and Confidential Treatment (Motion) at 1-2; Attachment Petition at 95. The second provision contains information about Keene Propane's bank and the account to which NH Gas was to make that payment. Motion at 4-5; Attachment Petition at 96. The third item is a reference to the settlement amount in the testimony of an Iberdrola official. Motion at 3; Direct Testimony of Thorn C. Dickinson at 7.

The settlement agreement is confidential by its terms, although it allows disclosure to regulators. Attachment Petition at 97. Iberdrola states that the settlement amount and bank information are "confidential, commercial, or financial information" that qualify for confidential treatment. Motion at 1-2. Iberdrola characterizes its request as narrow. Iberdrola proposes redacting only the bank information and the dollar amount from the settlement agreement and from Mr. Dickinson's testimony. The balance of both documents would remain public. Iberdrola also argues that the petition contains EnergyNorth's agreement *not* to include the

settlement payment in any future rate case, making the settlement amount less relevant to this docket. Motion at 3; Petition at 7-8.

As to HotZero's petition to intervene, the joint petitioners object, stating that HotZero does not satisfy the statutory requirements. In the alternative, the joint petitioners ask the Commission to limit HotZero's participation to the issue of EnergyNorth's rate plan.

B. HotZero

HotZero is a New Hampshire company that develops hot water district energy systems. HotZero, LLC Petition for Intervention at 1. Although HotZero does not object to the proposed sale of NH Gas, HotZero states that it has been in discussions for the development of a district energy system in Keene and that EnergyNorth's "indicative rate plan" could "stifle competition." *Id.* HotZero also states that EnergyNorth's rate plan may conflict with EnergyNorth's main extension policy. *Id.* HotZero seeks intervention limited to these issues.

C. OCA

The OCA does not object to Iberdrola's motion for confidential treatment provided that the OCA has access to the confidential information. The OCA does not object to HotZero's petition to intervene.

D. Staff

Staff does not object to Iberdrola's motion for confidential treatment. Staff also does not object to HotZero's intervention to the extent the request was based upon the permissive section of the intervention statute, RSA 541-A:32, II, and not the mandatory section, RSA 541-A:32, I.

III. COMMISSION ANALYSIS

The Commission first addresses Iberdrola's motion for confidential treatment. New Hampshire law exempts from disclosure records of "confidential, commercial or financial

information.” RSA 91-A:5, IV. The New Hampshire Supreme Court applies a three-step balancing test to determine whether documents meet this definition. *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008); see *William G. Whalen*, Order No. 25,679 at 15 (June 26, 2014). Under that test the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. Finally, *Lambert* directs the Commission to balance those competing interests and decide whether disclosure is appropriate. 157 N.H. at 383.

Based on this analysis, the Commission grants Iberdrola’s motion. The amount NH Gas agreed to pay is both confidential and private financial information. The amount paid was in settlement of a dispute in which the paying party did not admit liability. Attachment Petition at 97. All parties to the settlement agreement negotiated its terms to be confidential. *Id.* Any public interest in disclosure is less compelling because Iberdrola and EnergyNorth represented that the settlement amount will not factor into rates. It appears at this early stage that the only role the settlement amount will play in this docket is to support the argument that the proposed sale will benefit NH Gas customers because the settlement amount otherwise would have been included in NH Gas’s next cost-of-gas rate request. Petition at 7-8.

Keene Propane’s banking information is also confidential under the *Lambert* balancing test. Keene Propane is not a party and its banking information clearly involves a privacy interest. There is no reasonable public interest that would be served by disclosure. The Commission thus grants Iberdrola’s motion.

As to HotZero’s petition to intervene, the Commission finds that HotZero’s interests are solely competitive and do not meet the mandatory intervention standards of RSA 541-A:32, I. *Public Service Co. of N.H.*, Order No. 25,375 at 4 (June 18, 2012). Nonetheless, HotZero’s

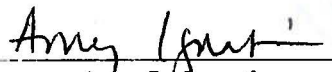
participation is in the interests of justice and will not likely impair the conduct of these proceedings. The Commission thus exercises its discretion pursuant to RSA 541-A:32, II and grants HotZero's petition to intervene. HotZero shall limit its participation to the issues of EnergyNorth's rate plan and potential inconsistencies with EnergyNorth's main extension policies. *See* RSA 541-A:32, III(a) (permitting Commission to limit intervenor's participation to interests demonstrated in its petition).

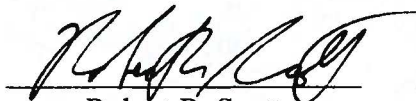
Based upon the foregoing, it is hereby

ORDERED, that Iberdrola's Motion for Protective Order and Confidential Treatment is GRANTED; and it is

FURTHER ORDERED, that HotZero's petition to intervene is GRANTED, but limited to the extent this docket reasonably addresses EnergyNorth's rate plan and main extension policies.


By order of the Public Utilities Commission of New Hampshire this ninth day of July, 2014.


Amy L. Ignatius
Chairman


Robert R. Scott
Commissioner


Martin P. Honigberg
Commissioner

Attested by:


Kimberly Nolin Smith
Assistant Secretary