

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

IR 15-124

ELECTRIC DISTRIBUTION UTILITIES

**Investigation into Potential Approaches to Ameliorate Adverse Wholesale
Electricity Market Conditions in New Hampshire**

Order Approving Motions for Confidential Treatment

ORDER NO. 25,811

September 9, 2015

In this order, we approve three motions for confidential treatment filed, pursuant to N.H. Code Admin. Rules Puc 203.08, by Spectra Energy, LP (Spectra), Portland Natural Gas Transmission System (PNGTS), and Liberty Utilities (Granite State Electric) Corp. (Liberty), respectively, in this Investigation. The motions pertain to information provided, or to be provided, by the companies to Commission Staff (Staff) as part of their responses to Staff inquiries.

I. MOTIONS FOR CONFIDENTIAL TREATMENT

A. Spectra

Spectra's Motion seeks protection of certain confidential, proprietary data presented within summary tables provided to Staff. The data at issue was presented to Staff in response to Questions 3 and 10, issued to Spectra on July 15, 2015. Staff's questions to Spectra may be seen here: <http://www.puc.nh.gov/Electric/Wholesale%20Investigation/IR%2015-124%20Staff%20Questions%20for%20Spectra.pdf>

Spectra asserts that the data, which pertains to gas prices, hypothetical and actual Locational Marginal Prices in the ISO-New England regional electricity market, and hypothetical

energy cost savings figures developed by Spectra's consultant, ICF, is "confidential, commercial, or financial information" exempt from public disclosure under RSA 91-A:5, IV, as disclosure would constitute an invasion of privacy. (Redacted versions of the summary tables provided in response to Staff Questions 3 and 10 may be seen at

[http://www.puc.nh.gov/Electric/Wholesale%20Investigation/REDACTED%20-](http://www.puc.nh.gov/Electric/Wholesale%20Investigation/REDACTED%20-%20Backup%20Data%20for%20Question%203.pdf)

[%20Backup%20Data%20for%20Question%203.pdf](http://www.puc.nh.gov/Electric/Wholesale%20Investigation/REDACTED%20-%20Backup%20Data%20for%20Question%203.pdf) and

[http://www.puc.nh.gov/Electric/Wholesale%20Investigation/REDACTED%20-](http://www.puc.nh.gov/Electric/Wholesale%20Investigation/REDACTED%20-%20Backup%20Data%20for%20Question%2010.pdf)

[%20Backup%20Data%20for%20Question%2010.pdf](http://www.puc.nh.gov/Electric/Wholesale%20Investigation/REDACTED%20-%20Backup%20Data%20for%20Question%2010.pdf), respectively).

Spectra states that Spectra and ICF "are members of a highly competitive and active industry, which relies on highly technical analysis that while time consuming and expensive to create can be easily duplicated once it enters the public domain. Disclosure of the Confidential Documents would reveal specific confidential, commercial, and financial information, as well as intellectual property and related technical analysis. The Confidential Documents were developed at great expense and time, and their disclosure will harm the competitive position of the Access Northeast projects, Spectra and ICF in the marketplace now and in the future" Spectra Motion at 4.

B. PNGTS

PNGTS filed its Motion on a categorical basis, pursuant to N.H. Code Admin. Rules Puc 203.08(b)(1). PNGTS seeks prospective protection for these categories of information: (i) the unit cost of firm service on PNGTS's next potential expansion project, and (ii) certain technical design details regarding this potential expansion. PNGTS Motion at 2. By letter dated August 12, 2015, PNGTS reiterated that it sought to establish protection for pricing and design details for its facilities, including such information provided to Staff in response to Staff

Question 4 to PNGTS, which asked for “an estimate of the unit cost of firm transportation service on PNGTS’ next expansion project together with the term of the long-term contract for pipeline capacity.”

In its Motion, PNGTS states that such information would constitute “confidential, commercial, or financial information” exempt from public disclosure under RSA 91-A:5, IV, as disclosure would constitute an invasion of privacy. PNGTS states that this information “is highly confidential and competitively sensitive. If this information were released, PNGTS would lose its ability to compete and/or negotiate with other pipelines, potential shippers and customers, contractors, and other third parties. Competitors with access to this information would be able to undercut PNGTS’ rates, and parties would have unfair and undue leverage over PNGTS contract negotiations. PNGTS’ ability to compete and negotiate depends on this information remaining private. PNGTS has a clear privacy interest that would be invaded by disclosure of this information.” PNGTS Motion at 3.

C. Liberty

Liberty’s Motion seeks protection for its response to Staff Question 1, dated July 9, 2015, which may be found here:

<http://www.puc.nh.gov/Electric/Wholesale%20Investigation/20150709%20IR%2015-124%20Second%20Set%20of%20Staff%20Questions%20for%20Liberty.pdf>

Staff Question 1 sought the identity of Anchor Shippers on the Supply Path segment of the Tennessee Gas Pipeline Northeast Energy Direct Project (TGP-NED). Liberty asserts that this information constitutes “confidential, commercial, or financial information” exempt from public disclosure under RSA 91-A:5, IV, as disclosure would constitute an invasion of privacy. Liberty states that its affiliate, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty

Utilities (EnergyNorth), has entered into non-disclosure agreements with TGP-NED. Liberty also states that it and the other Anchor Shippers “have an expectation of privacy due to the agreement by all parties to maintain confidentiality of all consortium negotiations. If there is a risk of the information being released prematurely, it could have a chilling effect on the willingness of the parties to work together on similar joint efforts in the future, thus impacting [EnergyNorth’s] ability to avail itself of the combined negotiating power of the group. Such an impact would have a detrimental effect on customers, as it would result in an inability of [EnergyNorth] to take advantage of potentially more attractive terms and conditions in future negotiations.” Liberty Motion at 2-3.

II. POSITIONS OF OTHER STAKEHOLDERS

No filings were made by Staff or other stakeholders in support of Spectra’s, PNGTS’s, or Liberty’s motions. Similarly, no formal objections to these motions were filed by Staff or other stakeholders. Nonetheless, Arthur B. Cunningham, Esq., in representing the Town of Fitzwilliam, sent a general comment by e-mail on August 3, 2015, to the stakeholder group in opposition to confidentiality being sought by other stakeholders in this Investigation.

III. COMMISSION ANALYSIS

A. Spectra

We agree with Spectra that the data points developed by ICF, and submitted in response to Staff Questions 3 and 10, constitute “confidential, commercial, or financial information,” and that the request for protection from public disclosure is consistent with the New Hampshire Right-to-Know law, RSA 91-A:5, IV.

The New Hampshire Supreme Court and the Commission apply a three-step balancing test to determine whether a document, or the information contained therein, falls within the category of “confidential, commercial, or financial information” under RSA 91-A:5, IV. *Northern Utilities, Inc.*, Order No. 25,700 (August 1, 2014) (citations omitted). 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. *Id.* Finally, the Commission balances those competing interests and decides whether disclosure is appropriate. *Id.* Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009).

The Commission recognizes that intellectual property, in the form of proprietary data sets developed by technical consultants from disparate sources, is worthy of protection from public disclosure where appropriate. *See, e.g., Northern Utilities, Inc.*, Order No. 25,251 (July 18, 2011). In this case, we find that the public’s interest in reviewing the data sets in question is not sufficient to outweigh the benefit derived from maintaining the confidentiality of that information. Disclosure of this non-publically-disseminated information could result in financial harm to Spectra and Spectra’s consultant, ICF, insofar as it contains competitively sensitive, proprietary information, and there is no indication that disclosure of the information would inform the public about the workings of the Commission. *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC at 486. Consequently, we grant Spectra’s motion for confidential treatment.

B. PNGTS

As a threshold matter, we note that while motions for confidential treatment on an advance, categorical basis pursuant to N.H. Code Admin. Rules Puc 203.08(b)(1) (“detailed description of the types of information for which confidentiality is sought”) are rare, they have been considered by the Commission in the past. *See Northern Utilities, Inc.*, Order No. 23,970 (May 10, 2002) (in relation to “any additional discovery, testimony, argument, or briefing relative to the confidential customer information”). In this instance, PNGTS seeks protective treatment for any cost and design-detail information submitted in response to Staff’s request for information regarding PNGTS’s potential future expansion.

We first note that it does not appear that Staff has actually solicited information regarding design details for PNGTS’s potential expansion. Nonetheless, we agree with PNGTS that the unit cost of firm service on PNGTS’s next potential expansion project constitutes “confidential, commercial, or financial information,” and that the request for protection from public disclosure is consistent with the New Hampshire Right-to-Know law, RSA 91-A:5, IV.

The Commission has granted cost information submitted by participants in competitive markets protection from public disclosure where appropriate. *See, e.g., Sprint Communications Company, L.P.*, Order No. 25,607 (December 19, 2013). Applying the three part balancing test, we find that the public’s interest in knowing PNGTS’s cost structure information at issue is not sufficient to outweigh the benefit derived from maintaining the confidentiality of that information. Disclosure of this non-publically-disseminated information could result in financial harm to PNGTS, insofar as it contains competitively sensitive, proprietary information, and there is no indication that disclosure of the information would inform the public about the workings of the Commission. *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC at

486. Consequently, we grant PNGTS's motion for confidential treatment as it pertains to cost information, submitted in writing to Staff.

C. Liberty

We agree with Liberty that the identity of the Anchor Shippers, other than EnergyNorth, on the TGP-NED project, submitted in response to Staff Question 1, constitutes "confidential, commercial, or financial information," and that the request for protection from public disclosure is consistent with the New Hampshire Right-to-Know law, RSA 91-A:5, IV.

Applying the three part balancing test, we find that the public's interest in knowing the identities of the Anchor Shippers in question is not sufficient to outweigh the benefit derived from maintaining the confidentiality of that information. Disclosure of this non-publically-disseminated information could result in financial harm to EnergyNorth, Liberty's affiliate, in that premature disclosure could have a chilling effect on EnergyNorth's ability to attract partners in future pipeline dealings, and there is no indication that disclosure of the information would inform the public about the workings of the Commission. *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC at 486. Consequently, we grant Liberty's motion for confidential treatment.

Consistent with past practice, the protective treatment provisions of this order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party, or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

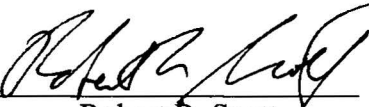
Based upon the foregoing, it is hereby

ORDERED, that the Motions for Confidential Treatment filed by Spectra, PNGTS, and Liberty are **GRANTED**, as delineated herein.

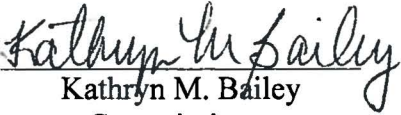
By order of the Public Utilities Commission of New Hampshire this ninth day of
September, 2015.



Martin P. Honigberg
Chairman

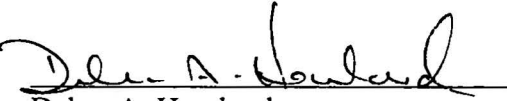


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director