

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

DG 15-494

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

**Petition for Approval of Supply Path Precedent Agreement
with Tennessee Gas Pipeline Company, LLC**

**Order on Petitions to Intervene and
Motion for Protective Order and Confidential Treatment**

ORDER NO. 25,861

January 22, 2016

In this order we grant in part, deny in part, and condition, the intervention requested by two advocacy groups, Pipe Line Awareness Network of the Northeast, Inc., and The New Hampshire Municipal Pipeline Coalition. We also grant EnergyNorth's motion for protection and confidential treatment of certain information contained within its initial filing.

The motion and other docket filings, except any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2015/15-494.html>.

I. BACKGROUND

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("EnergyNorth") is a public utility pursuant to RSA 362:2, providing natural gas distribution service to approximately 90,000 customers in southern and central New Hampshire and in Berlin. For customers taking gas supply service from EnergyNorth, EnergyNorth's service includes the purchase of pipeline space, or "capacity," to transport the gas for their supply. On December 8, 2015, EnergyNorth filed a Petition for Approval of Supply Path Precedent Agreement with Tennessee Gas Pipeline Company, LLC ("TGP"), and supporting testimony

(i.e., initial filing). EnergyNorth seeks the Commission's pre-approval of a twenty-year contract for 78,000 Dth per day of pipeline capacity on the "Supply Path" of the proposed Northeast Energy Direct (NED) pipeline project. EnergyNorth proposes to use the Supply Path capacity to transport gas from the Appalachian supply basin (i.e., Marcellus/Utica shale) to Wright, New York, where EnergyNorth expects to have facilities and contracts in place to bring the gas to New Hampshire. EnergyNorth's initial filing included a motion for protective order and confidential treatment related to certain information contained in the filing, including the Supply Path Precedent Agreement.

On December 31, 2015, Pipe Line Awareness Network of the Northeast, Inc. ("PLAN"), and The New Hampshire Municipal Pipeline Coalition ("Coalition") each filed a timely petition to intervene. On January 4, 2016, EnergyNorth filed an objection to the Coalition's petition.

II. INTERVENTION

On January 5, 2016, we convened a prehearing conference at which we heard further argument on the intervention petitions and the confidentiality motion.

PLAN provides "legal and regulatory advocacy" and public education concerning "fossil fuel infrastructure and its alternatives." PLAN Petition at 3. Some of PLAN's members are customers of EnergyNorth, and some are not. PLAN appears to base its request for intervention on its representation of the members who are EnergyNorth customers. Nonetheless, PLAN's motion also references its dedication "to representing the economic and property rights ... of its members." PLAN Petition at 3. The OCA supported PLAN's intervention.

Staff and EnergyNorth did not oppose PLAN's intervention so long as it mirrored the parameters of PLAN's intervention in DG 14-380, a recent docket concerning a long-term contract for capacity on the Market Path portion of the NED pipeline. In that case, we allowed

PLAN to intervene only on behalf of members who were also customers of EnergyNorth, and we disallowed PLAN's intervention on behalf of non-customer members. PLAN did not object to intervening under the same condition in this case.

The Coalition's members are thirteen "municipal corporations duly organized pursuant to New Hampshire state law" that seek to represent the interests of the citizens in their communities. Coalition Petition at 1. The Coalition towns are located along the proposed New Hampshire route of the NED pipeline. According to the Coalition, members are "obligated by law to protect the health, safety and welfare of citizens in their communities and these interests will be substantially impacted by the construction, operation and maintenance of the NED pipeline." Coalition Petition at 4. The OCA supports the Coalition's intervention, and the Staff took no position.

EnergyNorth objected to the Coalition's intervention, relying again on rulings in DG 14-380. According to EnergyNorth, the Coalition's members' interests in the "financial, physical, and environmental impacts" of the NED pipeline are not relevant to the Commission's determination in this proceeding of whether the Precedent Agreement is prudent, just, and reasonable. Objection at 1-3. EnergyNorth also argued that many members of the Coalition represent citizens who are not customers of EnergyNorth. According to EnergyNorth, those citizens who are not customers do not possess any interest in or connection to the outcome of this proceeding, and the citizens of Coalition members who are customers are adequately represented by the OCA.

The Coalition's intervention request is analogous to the PLAN intervention request; not all of its members are eligible or appropriate for intervention, but some are. For the reasons stated in our order on PLAN's petition to intervene in DG 14-380 and according to the same

terms, we grant in part and deny in part PLAN's and the Coalition's intervention in this proceeding. Order No. 25,767 (March 6, 2015) at 4.

Neither PLAN nor the Coalition has provided a basis for finding that the participation of its non-customer members will serve the interests of justice in this proceeding. *See* RSA 541-A:32, II. The Commission's review of the Supply Path Precedent Agreement necessarily begins with the assumptions that the pipeline will be constructed and that the terms of the Precedent Agreement will apply going forward when service to customers under the Precedent Agreement begins. Most, if not all, of PLAN's and the Coalition's claims concern the construction of the NED pipeline. The Coalition has not shown us how our decision on the terms of the Supply Path Precedent Agreement under our ratemaking authority would be informed or advanced by the participation of interests outside the scope of our regulatory authority. Consequently, we find that the participation of the Coalition's non-customer members would "impair the orderly and prompt conduct of [these expedited] proceedings." RSA 541-A:32, II.

To ensure an orderly and focused proceeding, we condition PLAN's and the Coalition's participation to the interest of its EnergyNorth-customer members in the prudence, justness and reasonableness of the Supply Path Precedent Agreement and its associated costs, to EnergyNorth and its customers.

III. CONFIDENTIALITY

EnergyNorth asserts in its motion that the information concerning pricing, delivery, and financial information, and redacted from the public version of its initial filing, is confidential and commercially sensitive under RSA 91-A:5, IV. According to EnergyNorth, disclosure of the redacted information would result in competitive harm to the company to the financial detriment of its customers. EnergyNorth states that it has an expectation of privacy for the redacted

information based on the terms of the Supply Path Precedent Agreement as well as the Commission's practice of protecting similar types of information. EnergyNorth argues that there is no public interest in the redacted information, but even if there is, EnergyNorth believes its privacy interests outweigh any public interest. The Commission received no objections to EnergyNorth's motion but sought clarification at the hearing of a redaction on page 7 of EnergyNorth's initial filing.

The New Hampshire Supreme Court and the Commission apply a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Abenaki Water Company, Inc.*, Order No. 25,840 (November 13, 2015), at 2 (citation omitted). Under the 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. *Id.*

The redacted information is similar to information filed by utilities and routinely kept confidential by the Commission's rules. *See, e.g.*, N.H. Code of Admin. Rules Puc 201.06(a)(26)(b) (protecting "pricing and delivery special terms of [gas] supply agreements"). Before those rules existed, the Commission ruled on the confidentiality of gas-related contract terms in the context of the semi-annual cost of gas proceedings. *See, e.g., EnergyNorth Natural Gas, Inc., d/b/a National Grid NH*, Order No. 25,161 (October 28, 2010), at 7-12.

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

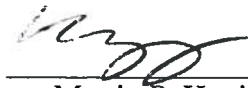
public interest in disclosure is outweighed by EnergyNorth’s interest in privacy. Accordingly, we grant EnergyNorth’s motions for protective order and confidential treatment. Consistent with past practice, EnergyNorth should provide the confidential information to any party in this docket that signs an appropriate confidentiality and non-disclosure agreement. 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

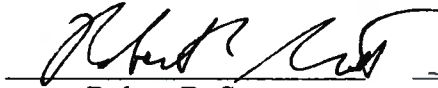
ORDERED, that Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities’ motion for protective order and confidential treatment regarding Supply Path Precedent Agreement is GRANTED; and it is

FURTHER ORDERED, that the motions to intervene by PLAN and the Coalition are GRANTED in part and DENIED in part and limited as described above.


By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 2016.



 Martin P. Honigberg
 Chairman

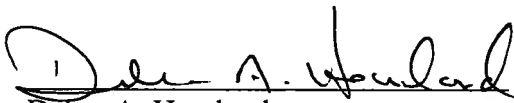


 Robert R. Scott
 Commissioner



 Kathryn M. Bailey
 Commissioner

Attested by:



 Debra A. Howland
 Executive Director