

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 15-289

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

Petition for Franchise Approval

Order on Motions to Compel Discovery and for Confidential Treatment

ORDER NO. 25,868

February 19, 2016

In this order we deny intervenor Ariel Arwen's motion to compel a response to data request Arwen 3-1, grant confidential treatment of financial material concerning future operations in the new franchise area, with the exception of the resulting customer rates, and compel the Company to produce its financial forecast to Ms. Arwen in response to Staff 3-9 after Ms. Arwen has signed a non-disclosure agreement concerning the Company's financial forecast.

I. PROCEDURAL HISTORY

On July 24, 2015, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("Liberty" or the "Company") filed a petition seeking Public Utilities Commission ("Commission") approval of its franchise to operate a public utility which would supply natural gas to customers located in the towns of Lebanon and Hanover, New Hampshire.

The Commission issued an order of notice on August 6, 2015, scheduling a prehearing conference on September 9, 2015. The Office of Consumer Advocate ("OCA") filed a letter indicating its participation in the docket on behalf of residential ratepayers on August 3, 2015, pursuant to RSA 363:28. Ariel Arwen, the City of Lebanon, NG Advantage, and Prometheus Energy Group, Inc., sought intervention. The Commission approved all four intervention requests. Valley Green Natural Gas LLC ("Valley Green") sought late intervention on

November 24, 2015. On December 3, 2015, the Commission granted Valley Green's late intervention request and required Valley Green to accept the procedural schedule previously established in the docket.

On December 1, 2015, Ms. Arwen moved to consolidate this docket with another pending docket, DG 15-155, in which Valley Green seeks a franchise to operate as a public utility and serve customers in the same franchise area, Lebanon and Hanover, New Hampshire. The Commission denied the motion to consolidate the two dockets by secretarial letter issued on December 8, 2015.

On January 7, 2016, Ms. Arwen filed a motion to compel Liberty to answer two data requests, Arwen 3-1 and Staff 3-9. Liberty objected to the motion to compel and filed a motion for confidential treatment of certain financial data on January 13, 2016. On January 20, 2016, Ms. Arwen filed a response to the Liberty objection and an objection to the motion for confidential treatment.

II. POSITIONS OF THE PARTIES AND STAFF

Ms. Arwen seeks to compel Liberty to answer the following two data requests:

Arwen 3-1 REQUEST:

In the New Hampshire Department of Environmental Services' "NH Climate Action Plan", targets are set of reducing greenhouse gas emissions 20% below 1990 levels by 2025 and 80% by 2050. If these goals remain in place, how does Liberty Utilities expect to provide service that would comply with these goals, even after taking into consideration the lower carbon footprint (at combustion) of gas over fuel oil and coal? Please specifically refer to the 2025 target and separately to the 2050 target.

Staff 3-9 REQUEST:

Please calculate the revenue requirement and rates using the attached format and a 40 year average service life to calculate depreciation on structures. Please provide the response in both hard copy and electronic (Microsoft Excel) formats, with all data and formulas intact.

The Company provided a response to Arwen 3-1 by reference to its response to Arwen 1-10 which stated:

The proposed expansion of EnergyNorth's distribution system in Hanover and Lebanon will allow the residents and businesses in those municipalities to select natural gas as a fuel source, which produces approximately 30% less carbon dioxide emissions when combusted compared to the fuels currently being utilized in the communities. The Company is also exploring utilizing methane currently being collected and flared at the Lebanon Landfill as an additional supply option. Initial estimates show that methane collected at the landfill could initially provide approximately 100,000 dekatherms of supply annually. In addition the Company is also exploring the feasibility of capturing methane from the City Wastewater Treatment Plant, via the installation of an anaerobic digester. The Company has had initial discussions with municipal officials regarding these options and the Company's chosen facility location was, in part, driven by its desire to utilize the methane, currently being flared at the Lebanon Landfill.

In addition to the direct emissions reductions associated with the combustion of a less carbon intensive fuel, potential customers will be able to access energy efficiency programs as described in the Company's response to Arwen 1-8.

Replacement of CO2 intensive fuels like propane and oil with natural gas, coupled with the utilization of renewable landfill and biogas and the increased accessibility and adoption of energy efficiency programs are consistent with the New Hampshire Climate Action Plan.

Recommended Action 1.1 – Maximize Energy Efficiency in New Construction, Recommended Action 1.2 – Maximize Energy Efficiency in Existing Residential Buildings, Recommended Action 1.3 – Maximize Energy Efficiency in Existing Commercial, Industrial, and Municipal buildings, Recommended Action 2.1 – create Incentive programs to Install Higher-Efficiency Equipment, Processes, and systems, Recommended Action 3.1 – Increase Renewable energy and Low-CO2 Thermal Energy Systems and Recommended Action 2.4 – Encourage the Use of Biogenic Waste Sources for Energy Generation.

The Company is unable to perform a comparative analysis of the complete natural gas supply chain that would be used to serve the communities, as such an analysis is largely dependent on accurate emissions data from the specific sites where the commodity would be extracted, as well as comparable data from the propane and heating oil suppliers and wells that are currently being utilized to serve the community and anchor customers. The Company has previously stated that it intends to procure the supply needed to serve the communities through an RFP process that could result in the commodity being procured from a number of different locations.

The Company maintained that it had responded to Arwen 3-1 and that requiring further response was burdensome and beyond the scope of this docket. The Company did not provide Ms. Arwen a response to Staff 3-9 and claimed that the financial forecasts requested were confidential. The Company further argued that if the Commission compelled an answer to Staff 3-9, the Commission should do so on the condition that Ms. Arwen not disclose the confidential information to anyone except for the Company, Commission (“Staff”) and the OCA.

Ms. Arwen disputed the Company’s claims that its financial forecasts were commercially sensitive, and that disclosure of the information would cause the Company harm and would constitute an invasion of privacy. Ms. Arwen took the position that the Company’s financial forecasts should not be treated as confidential and should be disclosed to her in response to Staff 3-9. Staff took no position on the pending motions.

III. COMMISSION ANALYSIS

To prevail on her Motion, Ms. Arwen must demonstrate that the data requests seek facts that are admissible or are reasonably calculated to lead to discovery of admissible evidence. *Public Service Co. of N.H.*, Order No. 25,646 (April 8, 2014) (citations omitted). “Discovery is not the time to argue policy or advocate for the final result but merely to seek and respond to factual matters that may lead to admissible evidence.” *City of Nashua*, Order No. 24,485 at 4 (July 8, 2005). Data requests are a “vehicle for developing factual information.” *Freedom Ring Communications, LLC d/b/a Bay Ring Communications*, Order No. 24,760 at 2 (June 7, 2007).

In ruling on a motion to compel, we “enjoy ‘broad discretion in the management of discovery.’” *Public Service Co. of N.H.*, Order No. 24,342 at 23 (June 29, 2004) (quoting *YYY Corp. v. Gazda*, 145 N.H. 53, 59 (2000)). We weigh “the effort needed to gather [the requested information], the availability of the information from other sources, and other relevant

criteria.” *Public Service Co. of N.H.*, Order 25,595 at 2-3 (Nov. 15, 2013); *City of Nashua*, Order No. 24,485 at 4. If we perceive of no circumstance in which the requested data would be relevant, we will deny a request to compel its production. Based on those standards, we grant in part and deny in part Ms. Arwen’s motion to compel Liberty’s responses to the disputed data requests as discussed below.

Arwen 3-1 requests information concerning how Liberty expects to provide service in its proposed franchise area that would comply with the goals of the Climate Action Plan. We do not find questions relating to the Climate Action Plan, adopted by the New Hampshire Climate Change Policy Task Force in March 2009, relevant to our inquiry concerning Liberty’s ability to operate as a natural gas public utility in Lebanon and Hanover, New Hampshire. As a result, we deny Ms. Arwen’s motion to compel Liberty to answer Arwen 3-1.

Staff 3-9 requests information concerning the revenue requirement and rates forecast by Liberty for its new franchise area in Lebanon and Hanover. Information concerning Liberty’s projected costs to provide natural gas service to its proposed franchise area is clearly relevant to questions of whether it is for the public good to grant Liberty such a franchise. *See* RSA 374:26 (Commission may grant franchises for the public good and not otherwise.) Having found the question likely to lead to relevant information, we next consider whether Liberty’s financial forecasts of costs, revenues requirements, and resulting customer rates, are confidential.

The New Hampshire Supreme Court and the Commission apply a three-step balancing test to determine whether information falls within the scope of RSA 91-A:5, IV. *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-383 (2008); *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 forecasted financial information reveals Liberty's investment plans for its proposed franchise area and comprises sensitive financial information the disclosure of which may cause harm to Liberty in its competition with another entity to serve the Lebanon Hanover area. We find that this type of information involves a privacy interest of Liberty. We further find that the public has an interest in disclosure of this information because it is central to whether Liberty could offer natural gas service in the proposed franchise area that would meet the public good requirements.

When balancing the two interests, we find that the public's interest in the estimated customer rate information outweighs Liberty's privacy interest in this docket and the estimated rates should be disclosed to the public. On the other hand, the Company's privacy interest in the cost and revenue numbers leading to the resulting customer rates is greater than the public's interest in disclosure and the balance of these interests does not favor disclosure of the underlying numbers leading to the resulting rates. As a result, we find the financial forecasts confidential, with the exception of the estimated customer rates. We instruct Liberty to file with the Commission a redacted form of its response to Staff 3-9 that shows column and row headings and the estimated customer rates, within five business days of the issuance of this order. To allow Ms. Arwen to participate fully in this docket, we order Liberty to provide Ms. Arwen with an unredacted answer to Staff 3-9, after Ms. Arwen signs a non-disclosure agreement provided by Liberty. We further instruct Ms. Arwen not to disclose this confidential information, except to Staff, the OCA, the Commission, and other parties who have signed a non-disclosure agreement with Liberty.

Based upon the foregoing, it is hereby


ORDERED, Intervenor Arwen's motion to compel is **DENIED** in part and **GRANTED** in part as discussed herein; and it is

FURTHER ORDERED, that Liberty's motion for confidential treatment is **GRANTED** as discussed herein; and it is

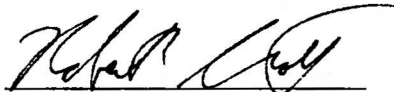
FURTHER ORDERED, that Liberty file a redacted copy of its response to Staff 3-9 in accordance with this order within five business days of the issuance of this order; and it is

FURTHER ORDERED, that Intervenor Arwen sign a non-disclosure agreement to be provided by Liberty before receiving the answer to data request Staff 3-9.

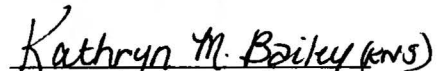
By order of the Public Utilities Commission of New Hampshire this nineteenth day of February, 2016.



Martin P. Honigberg
Chairman

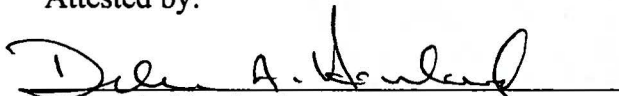


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director