

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

RE: ENERGNORTH NATURAL GAS, INC. D/B/A LIBERTY UTILITIES

DOCKET NO. DG 13-198

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
REGARDING STAFF DATA REQUESTS 1-4, 1-10, 2-1, 2-2, 3-1 and 3-5**

EnergyNorth Natural Gas, Inc. d/b/a Liberty Utilities (“Liberty” or the “Company”), in accordance with Puc 203.08, hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment to contract pricing and customer information provided in response to discovery requests from Staff. In support of this motion, the Company states as follows:

1. The Staff issued three sets of data requests to the Company in this docket regarding the Company’s line extension tariff. As part of those requests, the Staff sought information about specific customer installations, including costs to provide gas service to new customers, as well as in the case of one customer, information about one customer’s complaint regarding a request for a service installation. The Company in turn responded, providing information, a portion of which is confidential and the subject of this motion. The confidential information falls into two categories: contract price information and residential customer identifying information.

Contract Price Information

2. The Staff submitted the following data requests to the Company:

Staff 1-4. Please provide a detailed, itemized description of the service costs to add a new customer, including material and labor and the cost of each component, by location (Concord, Manchester, Nashua and Other).

Staff 1-10. Ref. DG 13-149, DR 1-5 & 1-7 Responses: Regarding the 51 potential customers along the 2013 CIBS main replacement segments (CIBS FY 2014) planned for Concord, Manchester and Nashua as per the plan submitted to Staff on January 14, 2013:
a. For each city, based on average usage of the existing customers along those lines and average cost to install a service (excluding CIBS restoration costs), please calculate the expected customer contribution to add a new customer during the main replacement. Provide supporting schedules in both PDF and Excel. b. Are customer inquiries for service along replacement mains treated any differently than other residential customer service inquiries? Explain.

Staff 2-1 - Please provide a copy of the contract(s) between Liberty and RH White.

Staff 2-2. Ref. Staff DR 1-4: Please provide a description of each of the cost categories and reference the unit pricing contained in the RH White contract used to calculate the Contractor Labor costs for Concord, Manchester, Nashua and Other. Explain all assumptions used in the calculation and provide supporting schedules in PDF and Excel.

Staff 3-1. Ref. Staff DR 2-8, Assumptions. Please explain the following: (a) What are SDP services?; (b) What other service installations are there other than Random and SDP? (c) Was/is CIAC only required on random service installations? (d) Please provide the average direct/unloaded cost to installation (see Staff DR 2-10(b)). Explain all assumptions used in the calculation and provide supporting schedules in PDF and Excel.

The Company's confidential responses to these requests are included with this motion as Exhibit A.

3. All of the pricing information relating to the construction of gas service to customers produced in response to these requests is derived from the Company's contract with RH White, its construction contractor. This contract was entered into by National Grid for all of its New England territories, and continues to be the contract under which the Company receives services from RH White. The pricing information that was provided in response to Staff's data requests is contained in a schedule of costs to the contract which was produced in response to Staff 2-1. The Company also produced a section of the contract entitled "New England Region: Massachusetts, Rhode Island and New Hampshire: Gas Mains & Services Installation Unit

Definitions, November, 2011” which provides detailed definitions of each of the individual price components. The Unit Definitions portion of the contract essentially provides the key to understanding the schedule of costs and how the contract unit pricing is applied. The response to Staff 2-2 includes a chart that contains certain of the unit pricing information from the RH White contract. The Company’s responses to Staff 1-14 and 1-10 contain cost information associated with adding a new customer to the Company’s system, including a breakdown of costs such as contractor labor and materials, all predicated on the RH White unit pricing information. The response to Staff 3-1 contains an estimate of the costs of each customer job, including the cost of contract labor.

4. RSA 91-A:5,IV exempts from public disclosure records that constitute confidential, commercial, or financial information. Based on *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 Service Company of New Hampshire*, Order No. 25,313 at 11-12 (December 30, 2011). The first step is to determine if there is a privacy interest at stake that would be invaded by the disclosure. If such an interest is at stake, the second step is to determine if there is a public interest in disclosure. The Commission has held that disclosure that informs the public of the conduct and activities of its government is in the public interest; otherwise, public disclosure is not warranted. *Public Service Company of New Hampshire*, Order 25,167 at 3 (November 9, 2010). If both of these steps are met, the Commission balances those interests in order to weigh the importance of keeping the record public with the harm from disclosure of the material for which protection is requested. *Id.* at 3-4.

5. Applying this three part test, the first inquiry is whether there is a privacy interest in the RH White Unit Definitions and the schedule of unit pricing. The RH White contract was entered into as the result of a competitive bid process. The Company has not publicly disclosed the RH White pricing and based on information and belief, RH White considers its pricing confidential commercial information. The Commission has recognized that “information...regarding the prices in a negotiated contract are confidential commercial or financial information. Moreover, in that both the Company and the supplier have interests in protecting the information in order to protect their future bargaining positions and abilities to obtain the best prices, we conclude that they both have privacy interests in the information.” *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, 96 N.H.P.U.C. 95 (2011). *See also Granite State Electric Company*, Order 25,338 at 8-9 (recognizing privacy of default service bids). Based on these holdings, it is reasonable to conclude that both the Company and RH White have a privacy interest in the contract prices and terms at issue here.

6. The next step in the analysis is to consider whether there is a public interest in disclosure of the information, including whether release of the information lends any insight into the workings of government. The pricing for individual tasks associated with gas service and main installations under the RH White contract do not provide insight into the workings of the Commission. While this information was provided to Staff so that the Staff could verify the Company’s calculations in the total estimated costs to install gas mains and services by municipality, it is not necessary to release the unit bid pricing to the public so it can in turn verify the Staff’s calculations. The public’s interest is in seeing those costs in totality, not by bid component. The Company did provide the total estimated service costs to add a new customer to its system. *See responses to Staff 1-4, 1-10 and Staff 3-1.*

7. Even if there were an articulable public interest in disclosure of the schedule of costs and Unit Definitions, the harm to the Company's procurement process well outweighs anything that would be gained from release of the information. Public disclosure of contract unit pricing and the Unit Definitions, which provide the explanation for how to apply the pricing to customer jobs, would likely chill the competitive procurement process, since potential bidders might not be willing to bid on Company contracts if they knew their prices would be disclosed to the public, and in particular, their competitors. The Commission has protected against this very harm in the context of the default service bidding process. *See Granite State Electric Company, Order 25,338 at 9* ("the interest in confidentiality outweighs that of disclosure inasmuch as disclosing the information would likely hamper the Company's ability to engage suppliers in competitive bidding in the future, which would, in turn, make it more difficult to obtain its supply at competitive prices and might thereby increase rates to customers. Thus, there is a very strong privacy interest in avoiding disclosure, which we find is not outweighed by the public's interest in disclosure.") That same reasoning should apply here to protect the unit pricing and Unit Definitions submitted in response to Staff 1-4, 1-10, 2-1, 2-2, and 3-1.

Customer Identifying Information

8. Staff 3-5 requested information regarding a customer complaint to the Commission. Specifically, it requested: "Ref. attached letter (THREE PAGES).¹ Please provide the supporting schedule(s) for the customer contribution requirement of \$5,281. Provide supporting schedules in PDF and Excel." In response, the Company produced a project cost

¹ The three page attachment included with the Staff's request was a complaint from a customer to the Commission regarding the customer's request for installation of a gas service, and the Company's October 15, 2013 response to the Commission. The three pages provided with the data request contain the customer's name, mailing address, email address, and phone number. In this motion, the Company also requests that the Commission protect the customer identifying information provided by Staff in request 3-5 issued to the Company.

estimate for the customer's requested service installation, which estimate included the customer's address. The Company seeks protective treatment for the customer address contained in the attachment to Staff 3-5, because it can be combined with the customer's name and other identifying information which is included in Staff's data request to the Company.

9. In *Lamy v. New Hampshire Public Utilities Commission*, the New Hampshire Supreme Court recognized the privacy interest of residential electric utility customers in their names and home addresses in the context of E-1 voltage reports prepared by a utility and filed with the Commission. *Lamy* at 152 N.H. at 110. In this case, the customer filed a complaint with the Commission regarding an estimate for installation of gas service at his residence. Staff Data Request 3-5. The Company responded to Staff 3-5 by producing a Project Cost Estimate which formed the basis for its installation estimate. That Project Cost Estimate contains the customer's address. The data request and the response together contain the customer's name, address, phone number, and email address. Based on *Lamy*, the Company believes that the customer has a cognizable privacy interest in this information.

10. The second step in the analysis under RSA 91-A is consideration of whether release of the information provides any insight into the workings of the Commission. In *Lamy*, the Court concluded that the E-1 voltage report in question revealed the workings of the utility, not the Commission. That is the case here. The Project Cost Estimate reflects the Company's job estimation process, but does not provide any insight into how the Commission functions. One could conclude that the customer complaint and Company response contained in the data request to the Company reflects the workings of the Commission to the extent it considered the complaint. However, when balancing the harm in disclosure of the customer's name, address, phone number, and email address against the benefit to the public in obtaining that information,

one can fairly conclude that the customer's privacy interests well outweigh any benefit to the public in having access to that information. Utility customers may be dissuaded from raising their concerns with the Commission if their personal, identifying information were to be provided to the public. For these reasons, the Company requests that the customer identifying information contained in the request and response to Staff 3-5 be protected from disclosure.

11. For these reasons, the Company requests that the Commission issue a protective order for the information as described above.

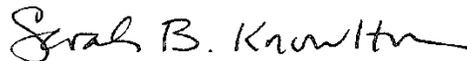
WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment Regarding Staff 1-4, 1-10, 2-1, 2-2, 3-1 and 3-5 and
- B. Such other relief as is just and equitable.

Respectfully submitted,

ENERGYNORTH NATURAL GAS, INC. D/B/A
LIBERTY UTILITIES

By its Attorney,



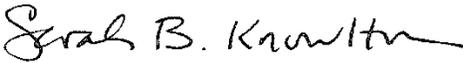
Date: November 27, 2013

By: _____

Sarah B. Knowlton
Assistant General Counsel
11 Northeastern Boulevard
Salem, NH 03079
Telephone (603) 328-2794
sarah.knowlton@libertyutilites.com

Certificate of Service

I hereby certify that on November 27, 2013, a copy of this Motion has been forwarded to the service list in this docket.



Sarah B. Knowlton