

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 17-198

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
D/B/A LIBERTY UTILITIES**

**Petition to Approve Firm Supply and Transportation Agreements
And the Granite Bridge Project**

Order Granting Confidential Treatment

ORDER NO. 26,166

August 1, 2018

In this order, the Commission finds that certain supplier and pricing information filed by Liberty is confidential and exempt from public disclosure. In addition, the Commission orders that no competing gas suppliers shall be permitted to view each other's confidential information.

I. PROCEDURAL HISTORY

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty or the Company) is a natural gas distribution utility that serves customers in more than 30 municipalities in New Hampshire. On December 22, 2017, Liberty petitioned for approval of a delivered supply contract with ENGIE Gas & LNG, LLC (ENGIE), and a precedent agreement with Portland Natural Gas Transmission System (PNGTS) for firm transportation capacity; and requested prudence determinations for the proposed Granite Bridge Pipeline and Granite Bridge LNG Facility (jointly, the Granite Bridge Project). Concurrently, Liberty filed for a protective order seeking confidential treatment of information.

The Office of the Consumer Advocate (OCA) filed an objection to the protective order on February 9, 2018. Several parties filed for intervention thereafter, including Repsol Energy

North America Corporation (Repsol) on March 7, 2018, and ENGIE on March 8, 2018. That same day, Liberty filed its response and objection to numerous interventions.

On March 14, 2018, Repsol filed its support for Liberty's motion for a protective order, and a separate request for confidential treatment of its information from other competitors. Repsol's filing included a response to the OCA's position regarding disclosure. ENGIE thereafter filed comments in support of Liberty's motion.

On March 16, 2018, Liberty filed an update to its motion and response to Repsol's and ENGIE's filings, specifically maintaining its objection to Repsol's intervention and requesting that the Commission refrain from ruling on confidentiality issues until the Company made its replacement filing of less-redacted documents. On April 10, 2018, Liberty filed those documents. On May 18, 2018, Repsol filed an amended motion seeking to keep its information from the public and all intervenors, and a reply to the OCA's objection. On May 29, the Pipe Line Awareness Network of the Northeast, Inc., filed an objection to Repsol's amended motion, and the OCA filed a letter clarifying the extent of its objection to confidential treatment. On May 30, the United Steelworkers of America Local 12012, filed objections to Repsol's amended motion.

Liberty's motion and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-198.html>.

II. POSITIONS

A. Liberty

Liberty's original motion for protective order sought confidential treatment of information that fell into five categories: (1) pricing and delivery terms of supply and capacity

contracts; (2) the estimated cost to upgrade the Concord Lateral pipeline; (3) regulatory approval dates and sensitive contract terms; (4) cost calculations for the pipeline and LNG facility; and (5) Liberty's reasons for choosing ENGIE over another supplier. With its March 16 filing, Liberty no longer sought confidential treatment of information it self-generated concerning the cost estimate of the Granite Bridge Project. Liberty did, however, continue to seek confidential treatment of certain contract terms and commercially sensitive information of ENGIE, Repsol, PNGTS, and other third parties.

Liberty asserted a privacy interest in the remaining information based on four factors: (1) an express confidentiality provision in its contract with PNGTS; (2) RSA 91-A, IV exemptions for confidential, commercial, or financial information; (3) confidential treatment of similar information in the past; and (4) confidential treatment of similar information pursuant to Commission rules. According to Liberty, disclosure of the information would be "highly disadvantageous" to the Company's and its counterparties' negotiating positions in the future and therefore harmful to Liberty's customers. Liberty believes that the harm that would occur if the information were disclosed outweighs the public's interest in the information. In addition, Liberty requests that parties that are commercial competitors not be granted access to other parties' competitively sensitive information.

B. ENGIE

ENGIE won the bid for the four-year natural gas supply contract under review. According to ENGIE, Liberty's redactions contain numerous pieces of competitively sensitive information: the commodity price of natural gas, demand charges, and potential adjustments thereto; ENGIE's daily deadline for gas nominations; Liberty's cost analysis of ENGIE contract terms; and the date by which Liberty must obtain its approvals for the contract to remain

effective. ENGIE argues that disclosure of its competitively sensitive information would permit competitors to undercut its future transactional bids. ENGIE states this information is routinely redacted from public files in state utility commission proceedings throughout New England.

C. Repsol

Repsol supported Liberty's motion. Repsol also moved to prevent members of the public and all intervenors in the docket from obtaining its contractual and pricing terms, which were exchanged with Liberty under a confidentiality agreement. Repsol requested that the information be made available only to the Commission, Staff, and the OCA. Repsol maintained that the information is confidential commercial information in which it has a privacy interest, for two reasons: (1) intervenors do not require the information to be informed of the Commission or the OCA's activities; and (2) that the harm to Repsol, Liberty, and Liberty's customers outweighs the public interest in the release of the information. Alternatively, Repsol requested limiting information disclosure to parties that are not actual or potential competitors.

D. OCA

The OCA argued that the balance favors public disclosure because pre-construction approval of the Granite Bridge Project is not required. According to the OCA, the purpose of Liberty's petition is to insulate Liberty's shareholders from post-construction prudence disallowances and to bolster the Company's request for construction approval from the Site Evaluation Committee. In addition, the OCA argued that cost estimates for expanding the Concord Lateral pipeline are too central and important not to disclose to the public under any balancing test, especially when, in the OCA's view, Liberty's arguments are conclusory and the information presented is stale.

Further, the OCA rejected what it said was Repsol's argument that community action groups cannot be trusted to comply with confidentiality agreements. The OCA argued for protective treatment on an interim basis only, and to defer until hearing all confidentiality decisions except for the Concord Lateral extensions' cost, where a full record can be developed.

III. COMMISSION ANALYSIS

The New Hampshire Supreme Court and the Commission apply a three-step test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008); *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 26,159 at 2 (July 17, 2018). 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. Order No. 26,159 at 2. Finally, the Commission balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, 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 Commission has previously determined that information relating to the terms of gas supply agreements negotiated by a jurisdictional gas distribution company constitutes sensitive commercial information that warrants confidential treatment. *See EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, Order No. 24,323 at 24 (May 7, 2004); *Northern Utilities, Inc.*, Order No. 23,964 at 3 (May 3, 2002); *EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, Order No. 23,950 (April 12, 2002); *see also Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,861 (January 22, 2016) (protecting pipeline pricing information contained in the Supply Path

Precedent Agreement filed by Liberty). The Commission has recognized that this kind of information is sensitive commercial information in a competitive market. *See EnergyNorth Natural Gas, Inc.*, Order No. 23,021 at 1 (September 21, 1998).

We have reviewed the information for which Liberty seeks protection, which includes Repsol's information, and we find that it constitutes confidential and commercial information of one or more of Liberty, Repsol, ENGIE, and PNGTS under RSA 91-A:5, IV. We further find that disclosure of the information would likely cause substantial harm to the competitive position of those entities and Liberty's customers. *See EnergyNorth Natural Gas, Inc.* Order No. 24,531 at 24 (October 21, 2005). While the public may have some interest in the information, such as aiding its understanding of the Commission's analysis, we find that the public's interest is outweighed by the commercial harm that disclosure would cause to Liberty, its suppliers, and its customers.

Repsol has requested that its information be kept confidential from all parties in the case, except for Staff and OCA, or in the alternative from its competitors and potential competitors. We find that Repsol and ENGIE are competitors and that each may be specifically harmed by the disclosure of its pricing information to the other. They shall not be entitled to one another's sensitive information during the course of this proceeding. *See Public Service Company of New Hampshire*, Order No. 25,167 at 6 (November 9, 2010). We find no reasonable basis, however, to conclude that Repsol's contractual and pricing information is so sensitive that other parties to the docket should not be provided the information. Consistent with past practice, Liberty should provide the confidential information to any party in this docket that signs an appropriate confidentiality and non-disclosure agreement.

Based upon the foregoing, it is hereby

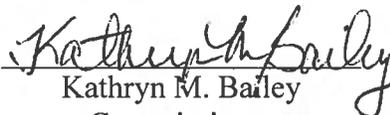
ORDERED, that the motion for confidential treatment filed by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities is GRANTED; and

FURTHER ORDERED, that the motion for confidential treatment filed by Repsol Energy North America Corporation is GRANTED in part and DENIED in part, as described in the body of this order.

By order of the Public Utilities Commission of New Hampshire this first day of August, 2018.



Martin P. Honigberg
Chairman

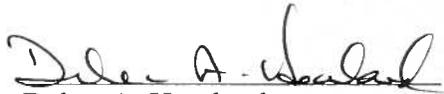


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director