

**THE STATE OF NEW HAMPSHIRE**

**BEFORE THE**

**PUBLIC UTILITIES COMMISSION**

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

**Docket No. DG 14-091**

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT REGARDING STAFF DATA REQUESTS 1-23, 2-13, 2-15 AND 3-11**

Liberty Utilities (EnergyNorth Natural Gas) Corp. 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 protective treatment to certain confidential information contained in responses to Staff Data Requests 1-23, 2-13, 2-15 and 3-11 in the above captioned docket. In support of this motion, the Company states as follows:

1. The Staff issued four sets of data requests to the Company regarding its Special Contract and Lease Agreement with iNATGAS. As part of those requests, the Staff sought information regarding potential CNG customers, project costs and iNATGAS’s potential profit associated with the proposed CNG Fueling Station. The Company in turn provided responses which contain information that is confidential and the subject of this motion.

2. 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 or not 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.

**Potential Customers of the iNATGAS CNG Fueling Station (Staff 2-15)**

3. On April 25, 2014, Staff issued data request 2-15 which stated as follows:

Ref. DR 1-18. Please identify the five customers that have inquired about converting to CNG, their location, and the load/sales potential of each. If known, what efforts have each of those customers undertaken regarding conversion, such as issuing a Request for Proposal?

The Company responded to this request, providing the names of the five companies that have contacted the Company and inquired about CNG conversion, their potential load, and information the Company had received about their efforts to potentially convert to CNG. A copy of the Company's confidential response is provided with this motion.

4. Applying the analysis under *Lambert v. Belknap County Convention*, the Company asserts that these potential customers of the iNATGAS CNG fueling station proposed in this docket have a privacy interest in their identities, their interest and efforts to change fuel source and their potential load. While commercial customers of a utility may not have a privacy interest in their identities, *see Lamy v. Public Service of New Hampshire*, 152 NH106, 109 (2005), the information provided in response to Staff 2-15 is different because these entities are not customers of the Company. Rather, they are businesses that have expressed an interest to the

Company in converting to CNG, which has caused the Company to explore options to facilitate the availability of CNG. If they converted to CNG, these entities would become customers of a shipper taking delivery of CNG from the iNATGAS CNG fueling station. Their identity, their desire to switch to a different fuel source and their potential CNG load is not information that is otherwise in the public domain. The Company asserts that this forms a sufficient basis for a privacy interest.

5. The second prong of the *Lambert* analysis requires consideration of whether release of the information would provide the public with insight into the Commission's operations. Release of the names of potential customers of a shipper taking CNG from the proposed iNATGAS CNG fueling and their possible load do not provide the public with information about the conduct of the Commission's work. Staff's June 4, 2014 Report filed in this docket provides information on the New England CNG Market which is sufficient to assess the viability of the proposed special contract and lease. Reliance on the information about the five potential customers in Staff 2-15 is not central to Staff's analysis and thus revealing of the Commission's work. As a result, the Commission should protect the information.

6. However, if it determines analysis should be made under the third prong of *Lambert*, there is a stronger interest in protecting the disclosure of information about the commercial operations of potential customers of the iNATGAS CNG fueling station than the public's interest in accessing the information. Because there is no public interest that would warrant overriding the privacy interest at stake, the information should be protected by the Commission from disclosure.

**iNATGAS Profit (Staff 2-13 and 3-11)**

7. Confidential responses to Staff data request 2-13 and 3-11 (enclosed with this motion) provide information concerning iNATGAS's potential profit from the CNG fueling station. In response to both Staff 2-13 and 3-11, the Company provided the total per therm charge, which the Commission has already determined is confidential. The attachment to Staff 2-13 and 3-11 provides a breakdown of the total per therm charge, which includes the CNG Compressor Adder, reflecting iNATGAS's profit from the sale of CNG from the fueling station. The Company asserts this information is covered by the Commission's ruling on its April 4<sup>th</sup>, 2014 Motion for Protective Order and Confidential Treatment, which was granted on the record at the April 23<sup>rd</sup> prehearing conference.

**Cost of Worcester Project (Staff 1-23)**

8. In Staff 1-23, the request sought a list of all existing and proposed iNATGAS CNG filling stations, including the cost to construct each station. The Company responded with information about iNATGAS's Worcester project, including its cost of construction (*see* confidential response to Staff 1-23, enclosed with this motion). The Company asserts there is a privacy interest in the construction cost of the Worcester facility. That information has not been provided publicly by iNATGAS, and reflects information about iNATGAS' business strategy and potential profit associated with that project. As demonstrated by the interventions in this docket, the CNG business is highly competitive. Competitors who are able to cobble together the pricing of projects and combine that with publicly available information may gain a competitive advantage. On this basis, iNATGAS has a privacy interest. Release of the information would not reveal any information about the workings of government. In this case,

the Commission was not involved in review of the Worcester project. Thus, there is nothing to be learned from the Commission's work if that information were made public. Finally, given that the information could cause competitive injury to iNATGAS, and there is no public interest implicated, the balancing clearly weighs in favor of protecting of the information.

9. For these reasons, Liberty requests that the Commission issue a protective order preventing the public disclosure of the confidential information in the responses to Staff data requests 1-23, 2-13, 2-15 and 3-11.

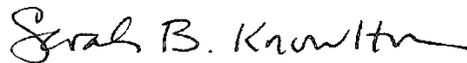
WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment; and
- B. Such other relief as is just and equitable.

Respectfully submitted,

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

By its Attorney,



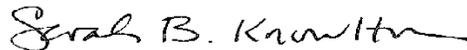
Date: June 6, 2014

By: \_\_\_\_\_

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Certificate of Service

I hereby certify that on June 6, 2014, a copy of this Motion has been forwarded to the Consumer Advocate.



Sarah B. Knowlton