

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Iberdrola USA Enterprises, Inc.,

- and -

Liberty Utilities (EnergyNorth Natural Gas) Corp.

Docket No. DG 14-_____

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

Iberdrola USA Enterprises, Inc. (“Iberdrola”), in accordance with Puc 203.08, hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment to certain information provided in connection with the Joint Petition for Authority to Transfer Ownership of New Hampshire Gas Corporation to Liberty Utilities (EnergyNorth Natural Gas) Corp. (the “Joint Petition”) being filed by Iberdrola and Liberty Utilities (EnergyNorth Natural Gas) Corp. (“Liberty”) (collectively, the “Petitioners”) with the Commission contemporaneously with this motion. In support of its motion, Iberdrola states as follows:

I. THE COMMISSION SHOULD GRANT PROTECTIVE TREATMENT TO THOSE PORTIONS OF THE SETTLEMENT AGREEMENT THAT CONSTITUTE CONFIDENTIAL BUSINESS INFORMATION

1. In connection with the Joint Petition, the Petitioners have attached a copy of a Stock Purchase Agreement (“SPA”) effecting the sale of all capital stock of New Hampshire Gas Corporation (“NHGC”) by Iberdrola to Liberty. Exhibit B to the SPA is a Settlement Agreement entered into between NHGC and Keene Propane Corporation (“KPC”) to resolve litigation pending in Cheshire County Superior Court. The Settlement Agreement provides for

the payment of a certain sum of money by NHGC to KPC. The amount of money paid by NHGC in settlement constitutes “confidential, commercial, or financial information” as defined in RSA 91-A:5, IV.

2. This amount is stated in the Settlement Agreement attached to the SPA, and is also referred to in the Testimony of Mr. Thorn Dickinson. Only those portions of the documents stating the amount paid in settlement have been redacted in the documents filed with the Commission.

3. RSA 91-A:5, IV states, in pertinent part, that records pertaining to “confidential, commercial, or financial information” are exempt from public disclosure. The analysis applied by the Commission for the confidentiality of sensitive commercial information “is essentially the same as for that regarding potential invasions of privacy, but for the fact that the information must also be determined to be confidential, commercial, or financial information, in addition to being information in which there is a privacy interest.” *EnergyNorth Natural Gas d/b/a National Grid NH*, Order No. 25,208 at p. 8 (March 23, 2011).

4. In determining whether to grant protective treatment, the Commission applies a three-step analysis developed by the New Hampshire Supreme Court. *Unitil Corp. & Northern Utilities*, DG 08-048, Order No. 25,014 at 3 (September 22, 2009) (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008)). The analysis first requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. Second, where such a privacy interest is at stake, the public’s interest in disclosure is assessed. *Lambert*, 157 N.H. at 382-83. 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.*

Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interest in non-disclosure. *Id.*

5. The amount of money paid by Iberdrola and / or its affiliates or subsidiaries to settle the KPC litigation constitutes “confidential, commercial, or financial information” in which Iberdrola has a critical privacy interest. If such information is disclosed, it will place Iberdrola and / or its affiliates or subsidiaries in a compromised negotiating position during settlement discussions in concurrent or future litigation. Opposing litigants will be able to assess the facts of a settled case in connection with the amount paid in settlement, which could assist them in determining how much Iberdrola may be willing to pay to resolve another matter. This would undermine Iberdrola’s position in such negotiations, and potentially harm it financially or hinder settlement discussions in pending or future litigation in which Iberdrola and / or its affiliates or subsidiaries are involved.

6. As explained the Joint Petition and the testimony supporting it, the amount paid in settlement will not be recovered through the rates of NHGC customers if the transfer of ownership is approved. To the extent that there is a public interest related to this benefit, it is in the rate impacts to customers of passing through the cost should the transaction not go forward. These impacts are disclosed and discussed in the Testimony of Thorn Dickinson. There is no prejudice to the public’s interest in disclosure if the rate impacts are disclosed and amount of the settlement remain confidential.

7. To the extent that there is any public interest in the amount paid in settlement of the litigation between NHGC and KPC, it is significantly outweighed by the harm that will be done to Iberdrola’s privacy interests in maintaining the confidentiality of such sensitive information if the amount is publicly disclosed. This is particularly true where, as here, only a

minimal amount of information has been redacted from the publicly-filed material. For these reasons, the Commission should grant confidential treatment to the settlement amount described above.

II. THE COMMISSION SHOULD GRANT PROTECTIVE TREATMENT TO ACCOUNT INFORMATION SET FORTH IN THE SETTLEMENT AGREEMENT

8. With the second “Term of Agreement” set forth in the Settlement Agreement is bank account information provided to effectuate the wire transfer of the settlement amount to the Plaintiffs. This includes the name of the Bank, the name of the account holder and, most critically, a bank account number.

9. RSA 91-A:5, IV protects “files whose disclosure would constitute an invasion of privacy,” as well as “confidential, commercial, or financial information.”

10. KPC is not a party to this Docket and disclosing information identifying the account to which the settlement amount was transferred will expose the party that maintains the account to a potential fraud or breach. The harm would be significant.

11. Moreover, there is no countervailing public interest in disclosure of this information. KPC is not a party to this Docket and information identifying the account to which the settlement amount was transferred is wholly irrelevant to the matter now before this Commission. Disclosure of this information will not provide the public with information about the conduct or activities of the Commission or other parts of New Hampshire state or local government. *Public Service Co. of N.H.*, DE 09-158, Order No. 25,059 at 14-15 (December 31, 2009).

12. Given the highly sensitive nature of the bank account information described above and the complete absence of a public interest in the disclosure of the information, the Commission should grant confidential treatment to this information.

WHEREFORE, Iberdrola respectfully requests that the Commission:

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

Respectfully Submitted,

Dated: June 6, 2014

IBERDROLA USA
ENTERPRISES, INC.

MCLANE, GRAF, RAULERSON &
MIDDLETON, PROFESSIONAL
ASSOCIATION

By: _____



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Certificate of Service

I hereby certify that a copy of this Motion for Protective Order and Confidential Treatment has been hand delivered to the Public Utilities Commission and electronically served.



Patrick H. Taylor