

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DG 15-289

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

Petition for Franchise Approval

**Objection to Ariel Arwen's Motion to Compel Responses to Data Requests and
Motion for Confidential Treatment of Attachment to Response to Staff 3-9**

Now comes Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("EnergyNorth" or "the Company"), by and through its attorneys, Orr & Reno, P.A., and objects to Ariel Arwen's Motion to Compel Responses to Data Requests dated January 7, 2016 in the above-captioned docket ("Motion to Compel") and simultaneously moves herein for confidential treatment of the attachment to Staff 3-9 pursuant to RSA 91-A:5 and Admin. Rule Puc 203.08. In support of this Objection and Motion, EnergyNorth states the following:

1. On January 7, 2016, Ms. Arwen filed the Motion to Compel, requesting that the Commission compel EnergyNorth to provide her with a "meaningful response" to Arwen 3-1 and to provide her with the entire response to Staff data request 3-9, including the attachment consisting of confidential spreadsheets that were provided only to Staff and the Office of Consumer Advocate ("OCA"). EnergyNorth believes that both requests should be denied and addresses separately each request below.

2. In the first round of data requests in this docket, Ms. Arwen sought from EnergyNorth an explanation of how the proposed expansion into Lebanon and Hanover is consistent with the goals of the New Hampshire Climate Action Plan ("Plan"). A copy of

the EnergyNorth response to Arwen 1-10 is attached to this Objection as Appendix A. Rather than object to such a broad and arguably irrelevant request, EnergyNorth made a good faith effort to respond to the request by providing a fairly detailed explanation of how the Company's proposal was consistent with the Plan's goals of reducing carbon emissions, including such factors as accompanying energy efficiency measures and displacement of higher carbon-emitting fuels. In the third round of data requests, however, Ms. Arwen asked a follow-up question about how EnergyNorth expected to provide service that would comply with the specific targets and goals in the Plan and sought a much more detailed analysis. A copy of the response to Arwen 3-1 is attached as Appendix B. Believing that it had provided a comprehensive response to this question in Arwen 1-10, EnergyNorth responded to Arwen 3-1 by citing to its response to Arwen 1-10.

3. In her Motion to Compel, Ms. Arwen is now seeking a detailed analysis of how this project will comply with the Plan's goals. As indicated in her December 23, 2015 email to EnergyNorth's counsel, a copy of which was included as Appendix A to the Motion to Compel, Ms. Arwen is concerned "that at some point, as a result of these projects and other locked-in natural gas commitments, there is a point in the future at which natural gas emissions will exceed the targets set forth in the NH Climate Action Plan."

4. The request is unreasonable, unduly burdensome and overly broad. The Plan was adopted seven years ago by a Task Force organized in response to an executive order issued by the Governor. While many of the Plan's goals are laudable, and EnergyNorth's proposal for operating a franchise to provide natural gas to customers in the Hanover/Lebanon area is consistent with its goals,¹ its recommendations do not have the

¹ The Plan, in its executive summary, noted that the most significant reductions in both emissions and costs will come from substantially increasing energy efficiency in all sectors of our economy, something which

force or weight of law because the Plan has not been adopted as law or rules. The Plan does not purport, nor does it have the authority, to create any enforcement mechanism for any of its “recommendations,” or to create any legal or regulatory requirements that would apply to a public utility granted a franchise to provide gas service to customers in Hanover and Lebanon. The only New Hampshire statutory provisions relating to carbon emissions are contained in RSA 125-O and apply only to fossil fueled power plants. Although the application of the Plan’s recommendations is broader than fossil fueled power plants, and it establishes statewide goals and seeks to achieve long term reductions in greenhouse gases, it is not legally binding, and it does not provide for monitoring, measuring, reporting or reduction of carbon emissions, nor does it require compliance by any particular sources with specific reduction targets.

5. What Ms. Arwen is now looking for, however, is a detailed analysis that erroneously assumes such binding requirements and the availability of relevant data to EnergyNorth. Even if it were possible to accurately calculate anticipated reductions in carbon emissions as a result of the proposed project, such analysis could not be done with any degree of integrity. For example, there is no baseline data from which a numerical analysis could be done and essentially no means to measure specific progress towards the Plan’s targets. Furthermore, EnergyNorth has no special access to information that could be used as the basis for a more detailed response. Not only would such an analysis be a major undertaking that would require the commitment of significant resources, it is something that would require obtaining information and data that is not in the control of EnergyNorth. Ms.

EnergyNorth has highlighted as being an important aspect of its proposal for Lebanon and Hanover and which it discussed in the response to Arwen 1-10. As the response to Arwen 1-10 states, EnergyNorth believes its operation of a gas franchise for Hanover and Lebanon as outlined in the prefiled testimony will be consistent with the goals of that plan for all of the reasons stated.

Arwen is thus asking EnergyNorth to undertake an analysis that has no legal or factual basis upon which to be developed, would be overly broad and irrelevant to any testimony that EnergyNorth has submitted in this docket, and would be extremely burdensome and speculative.

6. Ms. Arwen's request is also overly broad in that her second data request indicates that she is seeking consideration of the entire life cycle of greenhouse gas emissions from well head to burner tip. Obtaining data about the life cycle of greenhouse gases means that this request is now asking for an analysis that would require obtaining information about existing and future thermal fuel sources that goes far beyond the issues relevant to this docket, as well as the Plan, which was intended to address steps that could be taken to reduce New Hampshire's greenhouse gas emissions, and is well beyond the control of EnergyNorth.

7. Ms. Arwen's Motion also asks the Commission to direct EnergyNorth to provide copies of financial information that the Company has preliminarily designated as confidential information. In accordance with Admin. Rule Puc 203.08(d)(1) and (2), EnergyNorth responded to a data request from Staff seeking a calculation of the revenue requirement and prospective rates by providing spreadsheets that contain sensitive financial information for which the Company said it had a good faith basis for seeking confidential treatment. Consistent with Commission rules, more specifically Puc 203.02(a)(6) and Puc 203.08(d), the Company provided the confidential response to Staff and the Office of Consumer Advocate but not to the other parties. In the companion docket to this, DG 15-155, Valley Green took a similar approach when it provided a response to virtually the same question from Staff. See Valley Green response to Staff 3-10, a copy of which is attached as

Appendix C. Ms. Arwen now moves for EnergyNorth's confidential information to be disclosed to intervenors, without offering to sign an agreement precluding any further disclosure.

8. When Ms. Arwen sought to intervene in this docket she specifically stated that intervention would "allow me to protect my substantial interests in the impacts on public safety, traffic, energy and the environment, resulting from a determination on the proposed LNG/CNG facility and gas pipeline." Arwen Petition for Intervention, Paragraph 3. She went on to say that she could "be a source of information and perspective on such things as traffic, public safety, and environmental impacts of the proposed facility and the extent to which the proposal comports with the Energy Chapter of the City of Lebanon Master Plan." Arwen Petition for Intervention, Paragraph 4. In her Petition for Intervention she did not cite any interest in or any expertise associated with analyzing financial information.

9. Because Ms. Arwen has brought the issue of confidential treatment of the attachment to this response to the forefront, the Company not only objects to the Motion to Compel, but also moves at this time for confidential treatment of this information, as opposed to waiting until later in the proceeding, as it may do under Puc 203.08 (d). The Company has therefore attached to this Objection and Motion seven (7) copies of the confidential attachment to Staff 3-9 in accordance with Puc 203.08(f), which have been labeled as confidential, packaged separately, and marked as Appendix D.

10. EnergyNorth submits that the information which it provided in response to Staff 3-9 in this docket should be confidential information. This docket is not a rate case where such information would be much more relevant and arguably necessary for public

review; it is a docket about whether or not it would be for the public good to grant a stand-alone gas franchise to EnergyNorth to provide gas service to customers in Lebanon and Hanover. As the Chairman noted during the prehearing conference in DG 15-155: “it’s probably not in the public interest to have two distribution systems in the same place.”

Transcript of July 28, 2015 Prehearing Conference in DG 15-155 at 40. The Commission is thus considering in two separate dockets whether or not to grant a franchise to one of the applicants. The issue of confidential financial information is equally relevant to both dockets and is particularly sensitive given the fact that there are two competing applications for this franchise. Neither Company has had access to confidential information submitted by the other company in the other proceeding and release of such information publicly could harm both companies, as well as the integrity of both proceedings. *See also* Valley Green Natural Gas, LLC Objection to Arwen Motion to Compel, January 8, 2016.

11. There is also information contained in the spreadsheets which, if made public, would be available to potential competitors of EnergyNorth if it is granted the franchise. Because this franchise request is for a stand-alone gas system that would be required to compete against other providers of energy service to customers in the area, public disclosure could put the Company at a competitive disadvantage. EnergyNorth submits that now is not the time to make such sensitive financial information available to the public, especially given that the Commission has not decided whether to grant either of the petitions.

12. The standard the Commission uses in determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure is the analysis articulated in *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008) and *Lamy v. N.H. Public Utilities Commission*, 152 N.H. 106 (2005). Under this analysis the Commission first determines “whether the information is confidential, commercial or financial information, ‘and whether disclosure would constitute an invasion of privacy.’” *Unitil Energy Systems, Inc.*, DE 10-055, Order No. 25,214 (April 26, 2011), p. 35. If a privacy interest is implicated, the Commission then balances the asserted private confidential, commercial or financial interest against the public’s interest in disclosure in order to determine if disclosure would inform the public of the government’s conduct. *Id.* If it does not, then “disclosure is not warranted.” *Id.* See, e.g. *Public Service Company of New Hampshire*, Order No. 25,313 at 11-12 (December 30, 2011); see also, February 13, 2015 Hearing Examiner’s Report in DG 14-380 at 3; see also, *Power New England, LLC*, Order No. 25,528 at 5-7 (June 25, 2013) (“disclosure of private contractual terms could result in a competitive disadvantage to both NAPG and its vendor”).

13. The above-described information contained in the attachment to the response to Staff 3-9 meets the foregoing test and Ms. Arwen has articulated no reasoning that weighs in favor of public disclosure. For the reasons presented above, all of the information is clearly confidential, commercial or financial, and public disclosure would pose economic harm. Because disclosure would also constitute an invasion of privacy, a privacy interest is implicated. EnergyNorth must safeguard this information to protect its respective position in commercial transactions. Because EnergyNorth’s private, confidential, commercial and financial interests outweigh the public’s interest in disclosure, the information should be

protected. Conversely, disclosure will not inform the public of the government's conduct. Public disclosure of this information would not materially advance the public's understanding of the Commission or this particular proceeding at this point in the proceeding. Finally, the harm that would occur to EnergyNorth's interests outweighs the interest in disclosure. It would be extremely disadvantageous to EnergyNorth if it were required to disclose this information given Valley Green's pending request in DG 15-155, thus allowing a direct competitor to access the projected revenue requirement and rate information and all of the related information contained in the attachment that is being provided with the response to Staff 3-9.

WHEREFORE, for these reasons, EnergyNorth respectfully requests that the New Hampshire Public Utilities Commission:

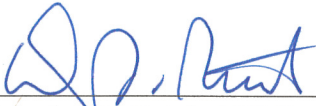
- A) Deny Ariel Arwen's Motion to Compel Responses to Data Requests;
- B) In the alternative, allow the motion to compel with regard to the attachment to Staff 3-9 on condition that Ms. Arwen not disclose the confidential information to anyone except for the Company, Staff, and the OCA;
- C) Grant EnergyNorth's motion within for confidential treatment of the attachment to the response to Staff 3-9; and
- D) Grant such other relief as may be just and equitable.

Respectfully submitted,

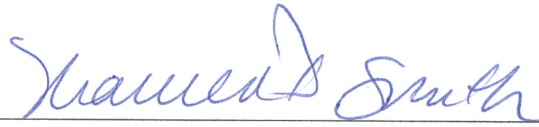
Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

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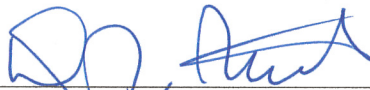
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Dated: January 13, 2016

Certificate of Service

A copy of this Objection to Ariel Arwen Motion to Compel Responses to Data Requests and Motion for Confidential Treatment of Attachment to Response to Staff 3-9 has been served by email this 13th day of January 2016 on the service list in DG 15-289.

Dated: January 13, 2016



Douglas L. Patch

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