

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

DOCKET NO. DG 15-___

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
REGARDING SUPPLY PATH PRECEDENT AGREEMENT**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or the “Company”) hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant protective treatment to certain confidential information contained in the Supply Path Precedent Agreement with Tennessee Gas Pipeline, LLC (“Tennessee”) and in Mr. DaFonte’s Pre-Filed Direct Testimony, both of which are being filed with the Commission contemporaneously with this motion. In support of this motion, the Company states as follows:

1. In this proceeding, the Company seeks Commission approval of a firm transportation agreement with Tennessee pursuant to which the Company would purchase up to 78,000 Dth/day of capacity on Tennessee’s proposed pipeline from Susquehanna County, Pennsylvania to Wright, New York for a 20 year term (the “Supply Path Precedent Agreement”). The Company is requesting protective treatment of a limited number of the commercial terms of the Supply Path Precedent Agreement which appear in the agreement itself as well as in Mr. DaFonte’s testimony. These include pricing terms, special delivery terms regarding the nature of the capacity arrangements being provided to the Company by Tennessee, and other financial terms of the agreement between the two parties. If released, this information could impair the

Company's ability to competitively negotiate other capacity arrangements in the future which would disadvantage the Company's customers.

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 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.

3. Applying this three part test, the first inquiry is whether there is a privacy interest in the commercial terms of the Supply Path Precedent Agreement for which the Company seeks protective treatment. Both Tennessee and the Company explicitly addressed the need for confidential treatment of the commercial terms of the Supply Path Precedent Agreement by including a confidentiality provision in the contract. Section 26 provides that "[e]ach Party shall hold the substance and terms of this Agreement confidential, but may disclose the substance and terms of this Agreement to its or its affiliates' directors, officers, employees, representatives, agents, lenders, consultants, attorneys or auditors...who have a need to know the substance and

terms of this Agreement and who are subject to a confidentiality obligation covering the disclosed information.” While Section 26 allows the Company to disclose the terms of the agreement in order to obtain regulatory approval, it does not provide for wholesale public release of all of the terms and conditions of the agreement. In addition to this contractual basis for an expectation of privacy, the Company also has an expectation of privacy in key terms such as pricing and related commercial provisions in supply agreements based on existing Commission practice. For example, in Docket DG 14-380, in which the Commission considered another precedent agreement between the Company and Tennessee, the Commission held that the Company had a reasonable expectation of privacy in similar terms contained in that agreement. *See* February 19, 2015 Secretarial Letter in DG 14-380. Commission rules also recognize the need to protect gas supply contracts through their explicit acknowledgment that “pricing and delivery special terms of supply agreements” provided in cost of gas proceedings are accorded confidential treatment. *See* Puc 201.06(a)(26)(b). Based on the Commission’s routine treatment of pricing and delivery special terms in similar dockets as well as cost of gas proceedings, the Company has a reasonable expectation of privacy that the same type of information will be accorded confidential treatment here.

4. 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 as it relates to this case. Here, public disclosure of the capacity supply pricing and delivery terms would not materially advance the public’s understanding of the Commission’s analysis in this proceeding. The Company negotiated the pricing and delivery terms with Tennessee, and thus their release does not shed any light on the Commission’s work but rather the Company’s negotiating power with Tennessee. The public’s interest is in

understanding the Commission's review of the proposed contract and why the contract is in the public interest. The Company's expectation is that the work that the Commission undertakes to review this transaction will be publicly available and as a result, the Commission's work will be available for public scrutiny. Even if one were to conclude that there is a public interest in disclosure of the pricing, delivery and financial terms of the Supply Path Precedent Agreement, the harm that could occur as a result of that disclosure is well outweighed by the privacy interests at stake. It would be highly disadvantageous to the Company's negotiating position if any future suppliers were aware of the pricing and other key terms upon which the Company was willing to conduct business. That harm would ultimately accrue to the Company's customers, since the cost associated with any capacity arrangement are charged to customers through the Company's cost of gas charge. Thus, the Company submits that there is no public interest in disclosing these key contract terms.

5. For these reasons, EnergyNorth requests that the Commission issue a protective order preventing the public disclosure of the pricing and special delivery terms of the Supply Path Precedent Agreement, consistent with its ruling in DG 14-380.

WHEREFORE, EnergyNorth respectfully requests that the Commission:

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

Respectfully submitted,

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

By Its Attorneys,

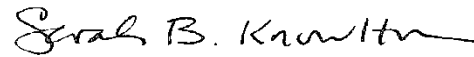
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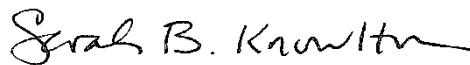


December 8, 2015

By: _____
Sarah B. Knowlton, Esquire

Certificate of Service

I hereby certify that on December 8, 2015, a copy of this Motion for Protective Order and Confidential Treatment Regarding Supply Path Precedent Agreement has been forwarded to the Office of Consumer Advocate.



Sarah B. Knowlton