

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 16-852

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

Petition for Expansion of Franchise to the Town of Hanover and City of Lebanon

**Revised MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL
TREATMENT**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty” or the “Company”), through counsel and as directed by Order No. 26,109 (March 5, 2018) (the “Order”), respectfully files this revised motion for confidential treatment of the Attachments and Appendices to Mr. Clark’s prefiled testimony, and attaches those “protected documents with more limited redactions” as directed by the Order.

In support of this motion, Liberty represents as follows:

Introduction.

1. The Order, which granted Liberty the right to provide natural gas service to Hanover and Lebanon and granted Liberty’s motion for confidential treatment of information attached to Mr. Clark’s testimony, also directed Liberty “to file the protected documents with more limited redactions and [a] revised motion for confidential treatment consistent with this order.” Order at 26.
2. This motion is the “revised motion” required by the Order.
3. Also filed this date are the “protected documents” with substantially fewer redactions as described below. This revised filing seeks confidential treatment of a combined total of about 3

or 4 pages, whereas the original filing redacted over 150 pages. The Company asks that the Commission grant confidential treatment of the limited information that remains redacted in the replacement filing.

Legal Standards.

4. Puc 203.08(a) states that the Commission “shall ... issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law” Puc 203.08(b) requires Liberty Utilities to (1) submit the documents for which confidential treatment is sought, (2) provide “[s]pecific reference to the statutory or common law support for confidentiality,” and (3) give “a detailed statement of the harm that would result from disclosure.”

5. First, the “documents for which confidential treatment is sought” have been submitted as part of the replacement filing of this date.

6. Second, each specific request can be supported by at least one of four separate legal arguments. These four arguments are described in detail below, are given a title, and are then applied to the various material for which the Company seeks confidential treatment. The manner chosen to conduct this analysis consists of tables that describe each section of confidential material, that list the applicable legal rule supporting confidentiality, and that contain “statement[s] of harm that would result from disclosure” to satisfy the third element of Puc 203.08(b) quoted above.

Legal Bases for the Company’s Confidentiality Requests.

7. RSA 91-A is the starting point for the Company’s confidentiality requests. The relevant section provides:

The following governmental records are exempted from the provisions of this chapter: ... Records pertaining to ... *confidential, commercial, or financial*

information ... and other files whose disclosure would constitute invasion of privacy.

RSA 91-A:5, IV (emphasis added).

8. The reasons for the Company's confidentiality requests fall into one or more of the following four categories, all of which are based on RSA 91-A:5, IV. The category headings will be used as a shorthand for the legal arguments in support of each confidentiality request in the tables below.

Customer: Customer information, including the name, address, and other identifying information about current or potential customers, is "confidential" under the "invasion of privacy" clause of RSA 91-A:5, IV. *See* Puc 201.04(a)(2) ("All documents submitted to the commission or staff ...shall become matters of public record, subject to RSA 91-A ... with the following exceptions ... Information about individual residential customers, the disclosure of which would constitute an invasion of privacy within the meaning of RSA 91-A:5, IV"); *Northern Utilities*, Order No. 23,970 (May 10, 2002) (granting confidential treatment of "customer-specific information, including names and account numbers"); *and see* RSA 363:38, I(a) ("No service provider shall [s]hare, disclose, or otherwise make accessible to any third party a customer's individual customer data"). It is Liberty's position that potential customer information deserves the same protections.

Third Party: Commercial, financial, and proprietary information of third parties, such as forecasts, reports, and analyses fall under the "confidential, commercial, or financial information" exemptions of RSA 91-A:5, IV. In *Electric*

Distribution Utilities, Order No. 25,811 (Sept. 9, 2015), the Commission was asked whether,

data, which pertains to gas prices, hypothetical and actual Locational Marginal Prices in the ISO-New England regional electricity market, and hypothetical energy cost savings figures developed by Spectra's consultant, ICF, is “confidential, commercial, or financial information” exempt from public disclosure under RSA 91-A:5, IV, as disclosure would constitute an invasion of privacy.

Id. at 1-2. The Commission granted the request:

The Commission recognizes that intellectual property, in the form of proprietary data sets developed by technical consultants from disparate sources, is worthy of protection from public disclosure where appropriate. In this case, we find that the public’s interest in reviewing the data sets in question is not sufficient to outweigh the benefit derived from maintaining the confidentiality of that information. Disclosure of this non-publically-disseminated information could result in financial harm to Spectra and Spectra’s consultant, ICF, insofar as it contains competitively sensitive, proprietary information, and there is no indication that disclosure of the information would inform the public about the workings of the Commission.

Id. at 5 (citation omitted); see *Unitil Energy Systems*, Order No. 25,214 at 36 (Apr. 26, 2011) (granting confidential treatment of “certain tables contained within the ECI report that depict results that ECI obtained from its analysis, stating that the tables at issue were developed by ECI for the purpose of efficiently serving all of its clients and, in this instance, performing its assigned responsibilities in its engagement with UES, thus representing its proprietary intellectual property”).

Contracts: Portions of agreements that contain commercial and financial terms, the disclosure of which would put the Company at a competitive disadvantage in negotiating a subsequent contract, are confidential. *Investigation of Utility Billing Practices*, Order No. 24,222 at 12 (Oct. 24, 2003) (“The dispositive factor is the reality that utilities may find it necessary to negotiate similar arrangements in the

future. Such negotiations would be hampered from the utilities' perspective if there were public disclosure of the terms they were previously willing to accept").

LU Information: Liberty Utilities' own collections of data, forecasts, and analyses of the relevant financial, load, and customer related data for the Hanover/Lebanon project, and for other projects cited in support this petition, and conclusions, plans, and designs drawn from those forecasts are confidential. This commercially sensitive information is protected under RSA 91-A:5, IV. *See EnergyNorth Natural Gas*, Order No. 25,094 at 12 (Apr. 29, 2010) ("Disclosure of National Grid's existing arrangements or its expectations about pricing, supply, and demand of natural gas would reveal the internal business decisions of the company and, at the same time, injure its bargaining position with its potential future suppliers of gas"); *Public Serv. Co. of N.H.*, Order No. 25,178 at 17 (Dec. 17, 2010) (granting motion to "protect the five-year forecast ... as well as the assumptions used in developing the forecast"); *EnergyNorth Natural Gas, Inc.*, Order No. 23,794 (May 14, 2001) (granting motion to protect the company's "calculation of Firm Sales Cost of Gas Rate," predating Puc 201.06(a)(11) which made such information routinely confidential); *see Aquarion Water Company*, Order No. 25,863 (Feb. 1, 2016) (the Commission found to be confidential "infrastructure information 'including identification of areas of the distribution system in need of rehabilitation, repair, or replacement'").

Specific Claims of Confidentiality.

9. Following is a table listing those references in Attachments WJC-3 and WJC-8 to Mr. Clark's testimony which the Company claims are confidential. The tables cite the legal basis for the claims of confidentiality using the shorthand labels from paragraph 7 above, and provide a statement of the harm that would flow from disclosure.

This is essentially the same table from the original motion for confidential treatment.

Comments preceded by asterisks (*) were added to explain changes to the redactions.

Bates Page	Description	Legal Basis (from ¶7)	Statement of Harm
42R	Liberty’s response to Dartmouth College’s RFP that the Company could offer “an indicative price range of [-----] per MMBTU.”	Customer	Disclosure could jeopardize the Company’s ability to negotiate with potential anchor customers to the detriment of all Liberty customers. *This redaction remains unchanged from the initial filing
67R	ICF created table showing prospect count and annual expected load in Hanover and Lebanon.	NA	*This table is no longer redacted.
80R	Table of estimated load, current fuel, and status of negotiations with potential anchor customers.	Customer LU Info	Disclosure would violate the potential customers’ privacy, and may cause the Company economic harm as it negotiates with these potential anchor customers. *The Company has un-redacted two of the four columns previously redacted.
83R	Table showing the design basis for Sanborn Head “fatal flaw” analysis.	NA	*This table is no longer redacted.
83R	Estimated market value of Lebanon site.	Third Party	Disclosure may reveal the realtor’s confidential opinion of value, information, and business practices. *This figure remains redacted.
83R	Purchase price of Lebanon site.	Contract LU Info	Disclosure may harm the Company’s ability to negotiate similar purchase agreements in the future, and the price paid is private information not relevant to this docket. *This figure remains redacted.

92R	Estimated cost to buy CNG storage trailers.	NA	*This figure is no longer redacted.
94R	Table listing responses to Keene RFP including bidder names, and proposed LNG and CNG prices.	Third Party	Disclosure may cause competitive harm to the bidders, and may reveal their internal and proprietary pricing practices. *This table remains redacted.
95R	Table of a supplier's indicative pricing for CNG delivered to various locations in NH.	Third Party	Disclosure may cause competitive harm to the bidder, may reveal its internal and proprietary pricing practices. *This table remains redacted.
96R	List of estimated load of potential anchor customers.	Customer LU Info	Disclosure of estimated load may violate customer privacy. Disclosure of Company-produced estimates may reveal internal practices and cause competitive harm. *All but the projected load for these potential customers has been un-redacted.
97R- 98R	Tables of estimated annual distribution revenues from potential anchor customers over first five years of Hanover/Lebanon project.	Customer LU Info	Estimated revenues are based on Company calculations from Company-estimated loads, and contains customer-specific data. Disclosure may cause privacy harm to potential customers, competitive harm to the Company, and disclosure of private Company financial and other data. *The projected rate class or special contract status has been un-redacted.

10. Following is a similar list of several appendices to the Expansion Plan for which the Company originally sought confidential treatment of the entire documents. In this revised motion, however, the Company has un-redacted most if not all of each document. Liberty explains below

the basis for its remaining claims of confidentiality and provides a statement of harm that would result from disclosure. This revised motion seeks confidential treatment only of the specific information described below and appropriately redacted in the replacement filing of this date.

Confidential Appendix (Bates #)	Description	Category	Statement of harm
I-2 Bates 107R-111R	Signed Letter of Intent containing potential customer information.	Customer Third Party	Disclosure may violate the potential customer’s privacy and cause competitive harm to the Company as the LOI contains proposed terms specific to this customer. *Only identifying information of the potential customer remains redacted.
I-3 Bates 112R-129R	Contract between Liberty Utilities and ICF International.	NA	*The entire document has been un-redacted.
II-1 Bates 130R	A sample map generated containing icons of potential customers within a certain area.	NA	*The entire document has been un-redacted.
II-2 Bates 131R	A sample “customer card” that appears when one clicks on the icons described above, containing information of potential customers.	Customer	Disclosure of the sample customer card would reveal the name, address, and other information of a potential customer in Lebanon. *Only identifying information of the potential customer remains redacted.
II-3 Bates 132R-134R	A sample customer list generated from the above-described map, containing information of potential customers.	Customer	Disclosure of the sample list would reveal the names and addresses of potential customers in Lebanon. *Only identifying information of the potential customers has been redacted.

II-18 Bates 157R-170R	“Fatal flaw” analysis by Sanborn, Head of the proposed site with details of the site and proposed facility.	NA	*The entire document has been un-redacted.
II-19 Bates 171R-194R	Valuation opinion of the proposed site by a local realtor, which the Company used to negotiate the option agreement.	Third Party LU data	Disclosure may reveal the realtor’s proprietary interests and business practices. Disclosure may harm the Company’s competitive interests when it seeks to negotiate similar agreements in the future. *Only the appraiser’s opinions of value remain redacted.
II-20 Bates 195R-215R	Option agreement between Liberty Utilities and the landfill site owner.	Contract	Disclosure may harm the Company’s ability to negotiate similar contracts in the future, and may reveal confidential financial and operational information. *Only the contract’s pricing terms and length of the option remain redacted.
II-21 Bates 216R-218R	Liberty Utilities’ RFP for indicative pricing to convert Keene to CNG/LNG.	NA	*The entire document has been un-redacted.
II-22 Bates 219R-224R	Contract with XNG, the supplier chosen in the above RFP.	Third Party LU Plans Contract	Disclosure may cause XNG competitive or proprietary harm, may disclose the Company’s infrastructure plans, and may harm both parties’ ability to negotiate similar contracts in the future. *Only specific pricing terms remain redacted.
II-23 Bates 225R-248R	XNG’s presentation to Liberty Utilities.	NA	*The entire document has been un-redacted.

II-24 Bates 249R- 250R	XNG's indicative price proposal for other CNG/LNG services for the Company.	Third Party LU Plans	Disclosure may cause the supplier competitive or proprietary harm, and may disclose the Company's supply plans causing harm to its ability to negotiate with other suppliers. *Only specific pricing terms remain redacted.
II-25 Bates 251R- 255R	The Company's construction estimates for the first five phases of the Hanover - Lebanon project.	NA	*The entire document has been un-redacted.

11. Below is the last item in the appendix that was partially redacted. In this replacement filing, the redactions have been reduced to make the potential customer's rate class public.

II-26 Bates 256R- 259R	Liberty Utilities' DCF analysis for the proposed build-out of Hanover/Lebanon project.	Customer LU Data	Disclosure would reveal internal Company estimates of revenue to be received from specific customers which may violate customer privacy. *Potential customer information and figures from which one may compute potential customer information remain redacted, but the potential customer's projected rate class has been un-redacted.
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12. 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 Co. of N.H.*, Order No. 25,313 at 11-12 (Dec. 30, 2011). The first step is to determine if there is a privacy interest at stake that would be invaded by disclosure. If so, 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 Co. of N.H.*,

Order 25,167 at 3 (Nov. 9, 2010). If there is an important privacy interest and a public interest in disclosure, the Commission must balance those interests. *Id.* at 3-4.

13. Here, Liberty Utilities, potential customers, and the third parties discussed above have clear privacy interests in the information and documents described above.

14. Any public interest in disclosure is outweighed by the privacy and business interests of the Company, the potential customers, and third parties.

15. Given the substantial interests in confidentiality, the lack of a substantial public interest in disclosure, Liberty Utilities has established the requirements for confidential treatment under Puc 203.08, and thus asks the Commission to reaffirm that part of the Order granting confidential treatment, but limited to those items discussed above.

WHEREFORE, Liberty Utilities respectfully requests that the Commission:

- A. Grant this motion for a protective order providing for the confidential treatment of the “limited redactions” to the material described above and redacted in the replacement filing of this date; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

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



Date: April 11, 2018


By: _____

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Certificate of Service

I hereby certify that on April 11, 2018, a copy of this Motion has been electronically forwarded to the service list.



By: _____
Michael J. Sheehan