

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DG 17-198

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

Motion for Protective Order and Confidential Treatment

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth”), through counsel, respectfully moves the Commission pursuant to Puc 203.08 for a protective order precluding the disclosure of certain commercially sensitive information contained in the *Supplemental Direct Testimony of Francisco C. DaFonte and William R. Killeen* (the “Supplemental Testimony”) and attachments that are being filed this date. In support of this motion, EnergyNorth represents as follows:

1. EnergyNorth’s supplemental filing reaffirms its request for Commission approval of a delivered supply contract with ENGIE Gas & LNG, LLC (which contract has been assigned to Constellation LNG, LLC), a precedent agreement for firm transportation capacity with Portland Natural Gas Transmission System, and the decision to proceed with the Granite Bridge Project, which consists of an in-state pipeline along State Route 101 and an on-system liquefied natural gas (“LNG”) facility.

2. The Supplemental Testimony and attachments contain the following five categories of information for which EnergyNorth seeks confidential treatment, which information has been shaded in the Company’s confidential filings and redacted in its public filing:

- (1) Confidential construction estimates by third party contractors for building the Granite Bridge pipeline and the Granite Bridge LNG facility, and

references from which one could calculate the precise estimates, which information can be found at Bates 10, 11, 31, and 39;

- (2) The Memorandum of Understanding (“MOU”) with Calpine Corporation, Exhibit FCD/WRK-1 at Bates 148-150, and references to the MOU’s terms or discussions from which one could “back into” the MOU’s terms that appear in the Supplemental testimony, Bates 44-46, and in Exhibit FCD/WRK-1 at Bates 140-146;
- (3) A confidential example supporting the statement that there is a “lack of liquidity at Dracut in general, and on the TGP Concord Lateral in particular,” at Bates 25. This cannot be described in much detail without disclosing its confidential nature; suffice to say that disclosure may cause substantial competitive harm to EnergyNorth’s customers;
- (4) The estimated costs for Tennessee Gas Pipeline (“TGP”) to upgrade the Concord Lateral, references to those costs in testimony, Bates 34, and communications between EnergyNorth and TGP related to those costs, FCD/WRK-1 at Bates 93, 102, 110, 112, 115, and 120; and
- (5) Third party pricing information that is embedded in the five SENDOUT® runs that are contained in Exhibits FCD/WRK-2, FCD/WRK-3, FCD/WRK-4, FCD/WRK-5, and FCD/WRK-6, at Bates 152 through Bates 486.

3. Note that some of the confidential material addressed in this motion is the same, of the same type, or derived from information for which EnergyNorth previously sought, and the Commission granted, confidential treatment with the original filing in this docket. *See* Order No. 26,166 (Aug. 1, 2018) (the “Order”). Therefore, as to the confidential information addressed in this motion that was also addressed in the Order, which consists of categories (4) and (5) above, the Order governs and no further discussion of the confidentiality standards is necessary. In the event the Commission or a party disagrees with the Company’s assertion of confidentiality in this motion, EnergyNorth reserves the right to more fully brief the confidentiality of the challenged information. As to the new items for which EnergyNorth seeks confidential treatment, this motion will make the case in support of confidentiality.

Category (4), TGP Information.

4. Taking the last two categories of confidential information first, the TGP information, category (4) above, is precisely the same information found to be confidential in the Order, that is, TGP's estimated price to upgrade the Concord Lateral and the comparison of those figures to the projected Granite Bridge costs. The Order provides ample precedent to again find the current recitations of this TGP information to be confidential.

5. What is new in this filing is that the Company also attached a number of email exchanges between EnergyNorth and TGP that include the TGP pricing and also provide detail behind TGP's estimated costs. Although the Order did not have to address whether these communications to be confidential because they were not included with the original filing, the rationale for finding the TGP costs to be confidential applies equally to the details that lie behind those confidential cost figures. Finding the TGP-EnergyNorth communications to be confidential is thus a logical and modest extension of the Order.

Category (5), Third Party Pricing contained in SENDOUT® reports.

6. The Order also found to be confidential the third party pricing information that is part of the SENDOUT® reports, category (5) above. The confidential third party pricing references in the SENDOUT® reports attached to the Supplemental Testimony are the same or are of the same nature (gas prices, quantities, terms, etc.) as those that the Order found to be confidential with the original filing (although the new SENDOUT® reports are testing different variables than in the original filing such as different construction costs). Thus, the reasons supporting the Commission's finding of confidentiality of the SENDOUT® runs in the Order apply equally here.

7. The remaining three categories of confidential information were not addressed in the Order. Thus, following is a recitation of the standards for confidentiality treatment and an application of those standards to the remaining three categories of confidential information listed above.

8. Pursuant to *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 Serv. 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 the disclosure. If so, the second step is to determine if there is a public interest in disclosure, because disclosure of information that informs the public of the conduct and activities of its government is generally in the public interest. Otherwise, public disclosure is not warranted. *Public Serv. Co. of N.H.*, Order 25,167 at 3 (Nov. 9, 2010). If these first two steps are met (both a protected privacy interest and an interest in public disclosure), the Commission then weighs the importance of keeping the record public against the harm that may flow from disclosure. *Id.* at 3-4.

9. Applying this three part test here, the information described in Categories (1), (2), and (3) above warrant confidential treatment.

Category (1), Third Party Cost Estimates

10. As described in the Supplemental testimony, EnergyNorth obtained four construction estimates for the Granite Bridge pipeline that it seeks to keep confidential along with the percentage variance between them (three estimates for the entire project and a fourth estimate only for the horizontal directional drills). EnergyNorth also obtained estimates for the Granite Bridge LNG facility from two contractors. Again, EnergyNorth seeks to keep confidential the

two estimates, the variance from each other, and the process by which EnergyNorth arrived at the figure it made public to preserve a robust bidding process for the LNG facility.

11. Commission rules incorporate RSA 91-A:5 as the authority under which parties may seek confidential treatment: “The commission shall upon motion 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(a).

12. Third party estimates are routinely protected from disclosure by the Commission pursuant to RSA 91-A:5, IV, and Puc 201.06(a). Disclosing such estimates could compromise the bidding process that EnergyNorth will undertake when it is time to obtain bids for the pipeline and LNG facility, thus potentially causing EnergyNorth and its customers harm.

13. Although EnergyNorth seeks to keep confidential the precise estimates and the percentage variance between the estimates (to prevent the contractors from knowing the other companies’ estimates), EnergyNorth did disclose appropriate figures drawn from those estimates for use in analyzing the proposed project. The public’s interest in disclosure is thus substantially satisfied through this disclosure of a single composite estimate for the pipeline and a single composite estimate for the LNG facility, which will form the basis of the Commission’s review. Keeping the underlying individual cost estimates confidential is thus appropriate.

Category (2), Calpine MOU

14. There are several sources of confidentiality for the MOU with Calpine. The MOU is marked “Highly Confidential” and contains an express confidentiality provision. Bates 150. RSA 91-A:5, IV, specifically exempts from public disclosure records that constitute

“confidential, commercial, or financial information.” The Commission has regularly ruled that the type of information at issue here constitutes such “confidential, commercial, or financial information.” Order No. 25,861 at 4-6 (Jan. 22, 2016). Pricing and other material terms of the MOU are presumed to be confidential in cost of gas proceedings pursuant to Puc 201.06(a)(11). Although that rule does not apply to this proceeding, it is an explicit acknowledgment that terms in gas supply contracts warrant confidential treatment in the first instance. Finally, the Company and Calpine have an expectation of privacy in key terms included in the MOU based on existing Commission practice. *See* Order No. 25,861.

15. Disclosure of the MOU and its commercial terms would cause both Calpine and EnergyNorth substantial competitive harm as it would prejudice both parties’ future efforts to negotiate similar agreements with other third parties. This potential harm far outweighs the public’s interest in these particular terms.

16. Thus, the MOU in its entirety, and all discussions of its terms (which appear at the locations in the file listed above), should be granted confidential treatment.

Category (3), Lack of Liquidity at Dracut.

17. The example demonstrating a “lack of liquidity at Dracut in general, and on the TGP Concord Lateral in particular” at issue here warrants confidential treatment pursuant to RSA 91-A:5, IV, as it is “confidential commercial ... information.” It is also the type of information that is routinely deemed confidential in cost of gas and default service hearings. *See* Puc 201.06(a)(11) and (15). Disclosure of the information would cause EnergyNorth and its customers grave competitive harm, which harm outweighs any public interest in disclosure.

18. For these reasons, EnergyNorth asks that the Commission issue a protective order preventing the public disclosure of the information described above and which is shaded or redacted in the Company's filing, as appropriate.

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 Attorney,



Date: March 15, 2019

By: _____
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Certificate of Service

I hereby certify that on March 15, 2019, a copy of this Motion has been forwarded to the service list.



Michael J. Sheehan