

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMISSION**

DOCKET NO. DG 18-XXX

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

Petition to Approve Renewable Natural Gas Supply and Transportation Contract

Motion for Confidential Treatment

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, through counsel, respectfully moves the Commission pursuant to Puc 203.08 for a protective order precluding the disclosure of certain customer information contained in pre-filed testimony and attachments that accompany the petition filed in this docket.

In support of this motion, Liberty represents as follows:

1. Liberty's filing seeks Commission approval of a Renewable Natural Gas Supply and Transportation Contract under which Liberty agrees to buy renewable natural gas (RNG) from a developer that will clean landfill gas to pipeline quality standards, and under which Liberty agrees to buy the cleaning facility if it meets certain quality and quantity standards.
2. The filing contains three categories of information for which the Company seeks confidential treatment (and which has been shaded in the Company's confidential filings and redacted in its public filing) – potential customer information, confidential pricing information, and the actual and projected output of the landfill that will be the source of the RNG, which information is akin to customer information.

3. First, there is confidential information regarding two potential customers that have signed letters of intent (LOI) with Liberty. The confidential information in the LOIs are the potential customers' identities and their actual and projected fuel usage. This information appears in Confidential Attachment WJC/MES-2 (the Liberty business case that refers to the two customers by name, Bates 065), Confidential Attachment WJC/MES-6 and Confidential Attachment WJC/MES-7 (which are the letters of intent for each potential customer, with their names and other identifying information redacted, Bates 075 and 080), and Confidential Attachment WJC/MES-8 (which is a spreadsheet that lists the past and projected usage of these two potential customers, Bates 084).

4. This information falls with the definition of "individual customer data" that is specifically protected by RSA 363:38. "No service provider shall ... [s]hare, disclose, or otherwise make accessible to any third party a customer's individual customer data," which the statute defines as, "information that ... can identify, singly or in combination, that specific customer, including the name, address, account number, quantity, characteristics, or time of consumption by the customer," RSA 363:37, I. The information is also more generally protected by RSA 91-A:5, IV:

While the public may have some interest in the information (e.g., to aid in its understanding of the Commission's analysis in this proceeding), we find that the public's interest is outweighed by Liberty's, TGP's, and its potential customers' privacy interests, and that disclosure of this information could result in commercial harm. In the case of the identities of potential customers, disclosure could harm the competitive position of Liberty insofar as competing energy suppliers could attempt to "poach" these potentially valuable anchor, and non-anchor customers.

Liberty Utilities (EnergyNorth Natural Gas) Corp., Order No. 25,987 at 9 (Feb. 8, 2017).

5. The second category of confidential information is the specific pricing from a contractor's bid to construct a decompression facility for Liberty. The information appears in Confidential Attachment WJC/MES-4 (a spreadsheet containing the pricing breakdown, Bates 072) and Confidential Attachment WJC/MES-9 (the actual bid with the same pricing information, Bates 086). Although this information may become public if Liberty accepts the bid, has the facilities built, and seeks rate recovery of the costs, at this time the information should remain confidential as "confidential, commercial, or financial information" that is protected from disclosure by RSA 91-A:5, IV. Disclosure of the bid pricing may cause competitive harm to the contractor and to Liberty should Liberty turn to a different contractor later in this process.

6. The third category of information for which Liberty seek protective treatment is the past and projected landfill gas output of the landfill from which RUDARPA will extract the LFG to make RNG. This information appears in Confidential Attachment WJC/MES-5, Bates 074. Although the landfill owner is not a potential Liberty customer, this information is akin to confidential potential customer information referenced above and is clearly "confidential, commercial, or financial information" that is protected from disclosure by RSA 91-A:5, IV.

7. 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).

8. 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 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, the Commission then weighs the importance of keeping the record public with the harm that may flow from disclosure. *Id.* at 3-4.

9. Liberty satisfies the first step because there are privacy interests in the redacted information described above. As cited above, RSA 363:38 protects customer information and the potential customers, the contractor, and the landfill owner all have an expectation of privacy in the information described above.

10. After finding the identified information to be confidential, the second step is for the Commission to consider whether there is a public interest in disclosure of the information, that is, whether releasing the information lends any insight into the workings of government as it relates to this case. Here, public disclosure of the redacted information would not materially advance the public's understanding of the Commission's analysis in this proceeding. The public's interest is in seeing the Commission's review of the proposed contract why it is in the public interest. The Company's expectation is that the Commission's review of the petition will be transparent and publicly available. Withholding from public view the few pieces of information that is the subject of this motion will not impair that transparency. The Commission can, and often has in the past, couch its public filings and orders in a manner that protects confidential material while disclosing the full scope of its review and analysis. The Commission can readily follow that path here. Thus, there is no public interest in disclosure of the limited information described above.

11. Finally, even if the Commission concludes that there is a public interest in disclosure, the harm that could occur as a result of that disclosure is outweighed by the privacy interests at stake. There is strong statutory language and Commission precedent protecting customer information of nearly all types and certainly including the identities and usage amounts at issue here. The landfill owner has a strong privacy interest in the output of its landfill, which is analogous to the usage of current and potential customers. And the Commission has long protected pricing proposals of third parties. It would be disadvantageous to the Company's negotiating position if future suppliers were aware of the pricing and other key terms on which the Company was willing to conduct business as disclosed here.

12. For these reasons, Liberty 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: September 6, 2018

By: _____
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Certificate of Service

I hereby certify that on September 6, 2018, a copy of this Motion has been forwarded to the Office of Consumer Advocate.

A handwritten signature in cursive script, appearing to read "M. Sheehan".

Michael J. Sheehan