

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 20-105

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

Distribution Service Rate Case

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 confidential pricing estimates from Tennessee Gas Pipeline (“TGP”) and estimated costs for potential EnergyNorth capital projects, which confidential information is contained in the *Supplemental Direct Testimony of Francisco C. DaFonte and William R. Killeen and Steven E. Mullen* (the Supplemental Testimony), also filed on this date.

In support of this motion, EnergyNorth represents as follows:

1. The Supplemental Testimony presents the Company’s request for Commission approval to recover the costs incurred to investigate, evaluate, and assess the future development of the Granite Bridge Project.
2. The Supplemental Testimony includes confidential TGP pricing information that the Commission has previously ruled to be confidential in Order No. 26,166 (Aug. 1, 2018), as well as similar confidential pricing information that TGP provided after the date of Order No. 26,166, and other information from which one could calculate, or “back in to,” the confidential TGP pricing information. The Supplemental Testimony also includes projected costs for future EnergyNorth projects, which estimates should remain confidential to protect

the viability of future competitive bid processes.

3. The confidential TGP information appears in the Supplemental Testimony at Bates 18, 20, 23–24, 26–27, 35–37, and 44–45. The confidential project estimates appear at Bates 26–27.
4. Applying the three factor *Belknap*¹ test, the Commission ruled to be confidential “the estimated cost to upgrade the Concord Lateral pipeline” that was included in EnergyNorth’s initial filing in Docket No. DG 17-048. Order No. 26,166 at 2, 6. TGP provided these cost estimates in the form of dollars per dekatherm (\$/Dth), thus Order No. 26,122 granted confidential treatment to TGP pricing in statements such as the following: “The daily rates provided by Tennessee to EnergyNorth for expanding the TGP Concord Lateral ranged from ■ to ■ per Dth.”
5. The Supplemental Testimony includes references to the very same TGP pricing estimates addressed in Order No. 26,122. EnergyNorth thus asks the Commission to similarly recognize the confidentiality of that information in the Supplemental Testimony.
6. The Supplemental Testimony also includes updated pricing estimates that TGP provided to EnergyNorth after the Commission issued Order No. 26,122.
7. This additional TGP pricing is from the same party (TGP), is expressed in the same \$/Dth form, is for the same services -- the right to transport natural gas on TGP’s Concord Lateral, and is thus similar confidential third party pricing that warrants confidential treatment.
8. The Company asks that the Commission apply the rationale and finding in Order No. 26,166 and similarly find to be confidential the subsequent TGP pricing information as contained in the Supplemental Testimony, and other figures from which one could calculate

¹ *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008).

the confidential pricing.

9. The Company also seeks confidential treatment of its estimated project costs which, if disclosed, would impair the Company's ability to receive competitive pricing for those projects.
10. EnergyNorth's request for confidential treatment of the project cost estimates is consistent with the public disclosure requirements of New Hampshire's Right to Know law, which expressly exempts from the public disclosure requirements any records pertaining to "confidential, commercial or financial information." RSA 91-A:5, IV; *see Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). Application of this exemption requires "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." Order No. 25,014 at (Sept. 22, 2009).
11. The determination of whether to grant a motion for confidential treatment involves a balancing of the public's interest in full disclosure with the countervailing commercial or private interests for non-disclosure.
12. Puc 203.08 recognizes RSA 91-A:5, IV, as a basis to assert a privacy interest in "confidential commercial or financial information" and to seek protection from public disclosure pursuant to an order of the Commission.
13. The Commission has previously weighed the interests in keeping projected costs confidential against the public interests in disclosure in the context of a future request for proposals, and ruled in favor of confidentiality. "The disclosure of project cost and savings information has the potential to negatively impact the results of the City of Concord's competitive solicitation for an LED conversion vendor." Order No. 26,422 at 4 (Nov. 6,

2020).

14. Applying the three-step *Lambert* analysis, the Company asks the Commission to grant confidential treatment for the project estimates.

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: November 20, 2020

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Certificate of Service

I certify that on November 20, 2020, a copy of this Motion has been electronically forwarded to the service list.

A handwritten signature in black ink, appearing to read "M. Sheehan", is positioned above a horizontal line.

Michael J. Sheehan