

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 20-105

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

Distribution Service Rate Case

Motion for Protective Order and Confidential Treatment

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (“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) contained within the *Rebuttal Testimony of Francisco C. DaFonte, William R. Killeen, and Steven E. Mullen* (the DaFonte/Killeen/Mullen Testimony), and confidential customer information in Attachment WJC/SEM-1 to the *Rebuttal Testimony of William J. Clark and Steven E. Mullen* (the Clark/Mullen Testimony), which testimonies are also being filed this date.

In support of this motion, EnergyNorth represents as follows:

1. The DaFonte/Killeen/Mullen testimony contains the same type of confidential TGP pricing that the Commission has ruled to be confidential in the Granite Bridge proceeding, Docket No. DG 17-198. Order No. 26,166 (Aug. 1, 2018). The Company also sought confidential treatment of the same information in this docket because it was included in the November 20, 2020, *Supplemental Direct Testimony of Francisco C. DaFonte, William R. Killeen, and Steven E. Mullen*. The Commission has not yet ruled on that motion.
2. The Company also moves for confidential treatment of customer names contained in Attachment WJC/SEM-1 to the Clark/Mullen Testimony. Attachment WJC/SEM-1 is a data response that lists the names of customers who committed to take service in Pelham prior to

the commencement of construction of the Pelham take station, and of additional Pelham customers who subsequently agreed to take service from the Company.

The TGP Information.

3. Applying the three factor *Belknap*¹ test, in Order No. 26,166 the Commission ruled to be confidential “the estimated cost to upgrade the Concord Lateral pipeline” that were included in EnergyNorth’s initial filing in Docket No. DG 17-198. Order No. 26,166 at 2, 6. TGP provided these cost estimates in the format of dollars per dekatherm (\$/Dth), thus Order No. 26,166 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.”
4. The DaFonte/Killeen/Mullen Testimony includes references to the very same TGP pricing estimates addressed in Order No. 26,166. EnergyNorth thus asks the Commission to similarly recognize the confidentiality of that information in the rebuttal testimony.
5. The DaFonte/Killeen/Mullen Testimony also includes updated pricing estimates that TGP provided to EnergyNorth after the Commission issued Order No. 26,166.
6. This additional TGP pricing is from the same party (TGP), is expressed in the same \$/Dth format, is for the same services (the right to transport natural gas on TGP’s Concord Lateral), and is thus essentially the same third party pricing that warrants confidential treatment.
7. 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 rebuttal testimony.

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

The Customer Information in Attachment WJC/SEM-1

8. The customer information contained in Attachment WJC/SEM-1 is “individual customer data ... that can identify, singly or in combination, that specific customer,” RSA 363:37, I, and is thus protected from disclosure by RSA 363:38 and RSA 91-A:5, IV.
9. RSA 363:37, I defines “Individual customer data” as “information that is collected as part of providing electric, natural gas, water, or related services to a customer 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.”
10. And RSA 363:38 states that “No service provider shall ... Share, disclose, or otherwise make accessible to any third party a customer's individual customer data, except as provided in paragraph V or upon the express consent of the customer.”
11. The customer information contained in Attachment WJC/SEM-1, the identity of Pelham customers, falls squarely within the above statutes, and is thus eligible for confidential treatment pursuant to those statutes, RSA 91-A:5, IV, and Puc 203.08 (which 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).
12. The determination of whether to grant a motion for confidential treatment ultimately involves the above-referenced balancing of the public’s interest in disclosure against the countervailing interests in privacy.
13. Given the clear statutory directives that protect confidential customer information, application of the three-step *Lambert* analysis must result in a finding that the interests in confidentiality outweigh any countervailing interest in disclosure.

14. Therefore, the Company asks the Commission to grant confidential treatment for the customer information in Attachment WJC/SEM-1.

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
By its Attorney,



Date: April 29, 2021

By: _____
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Certificate of Service

I certify that on April 29, 2021, a copy of this Motion has been electronically forwarded to the service list.



Michael J. Sheehan