

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 21-008

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY
Petition for Approval of a Firm Transportation Agreement with Tennessee Gas
Pipeline Company, LLC**

Order on Motion for Protective Order and Confidential Treatment

O R D E R N O. 26,744

December 12, 2022

This order grants protective treatment to certain information filed in this docket or disclosed through discovery, as requested by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a/ Liberty (Liberty) in motions filed on January 20, 2021 and October 5, 2021.

The motions and other docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at:

<https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-008.html>.

I. LIBERTY'S MOTIONS FOR PROTECTIVE ORDERS

Liberty requested protective orders applicable to four different categories of information. In support of these requests, Liberty identified a legal basis for confidential treatment of each category of information and identified what harm would result if the information were to be publicly disclosed.

The first category of information is third-party indicative pricing information and other information from which one could calculate the same pricing information. According to Liberty, this information is subject to a non-disclosure agreement and

is therefore confidential commercial or financial information that should be kept confidential to protect the viability of future competitive bid processes. According to Liberty, the Commission previously found the same or similar information to be confidential and noted that it does not seek confidential treatment of the overall contract price, which adequately balances the public's right to information.

Transcript of March 24, 2021 Hearing at 21-22.

The second category of information consists of projected costs for future Liberty projects, which Liberty argued is commercial information that should be protected from disclosure to protect the viability of future competitive bid processes.

The third category of information consists of customer data, including names, usage and payment histories, and special contract terms. Liberty asserts that such information is confidential pursuant to RSA 363:38 and RSA 91-A:5, IV, and should be kept confidential to protect their customer's privacy interests under the law.

The fourth category of information consists of a propriety model prepared by a consultant, which Liberty asserts is competitively sensitive, and therefore is protected by RSA 91-A:5, IV as confidential commercial information. According to Liberty, disclosure would harm the third-party consultant by disclosing proprietary information that is otherwise confidentially maintained.

II. OCA POSITION AT HEARING

At a prehearing conference on March 24, 2021, the Office of the Consumer Advocate stated that Liberty's request filed January 20, 2021, applicable to the first and second categories of information, is overly broad and does not adequately balance the public's interest right to access the information. Transcript of March 24, 2021 Hearing at 17.

III. COMMISSION ANALYSIS

The New Hampshire Supreme Court has interpreted the exemption for confidential, commercial, or financial information to require an “analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy.” *Union Leader Corp. v. NH Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations omitted).

“Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public’s interest in disclosure, since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public’s interest in disclosure.” *Id.* at 553 (citation omitted).

In furtherance of the Right-to-Know law, the burden of proving that the information is confidential and private rests with the party seeking non-disclosure. *See Goode v. NH Legislative Budget Assistant*, 148 N.H. 551, 555 (2002). RSA 91-A:5, IV expressly exempts from public disclosure requirements any “records pertaining to ... confidential, commercial or financial information.....” In determining whether commercial or financial information should be deemed confidential and private, we consider the three-step analysis applied by the Commission’s rule on requests for confidential treatment, N.H. Code Admin. Rules Puc 203.08. The rule is designed to facilitate the balancing test required by the relevant case law by requiring petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. *See* Puc 203.08(b).

The Commission has reviewed the information that Liberty sought protective orders for and agrees that Liberty requested confidential treatment of either confidential, commercial or financial information under RSA 91-A:5, IV or individual customer information under RSA 363:38. Weighing potential harm to Liberty or to third parties against the benefits of disclosure of the information to the public, we find that, on balance, protective treatment is warranted. Therefore, Liberty’s motions are GRANTED. Consistent with past practice and Puc 203.08(k), the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party or member of the public, to reconsider this protective order under RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that Liberty’s Motions for Protective Order and Confidential Treatment as discussed herein are GRANTED.

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 2022.


 Daniel C. Goldner
 Chairman


 Carleton B. Simpson
 Commissioner

Service List - Docket Related

Docket#: 21-008

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