

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 23-067

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

Request for Change in Distribution Rates

**Order Granting Company Motions for Confidential Treatment and
Extending Stay Until November 15, 2024**

ORDER NO. 27,063

October 10, 2024

In this order, the Commission approves three motions for confidential treatment filed by the Company in this docket, and also extends the stay in this proceeding until November 15, 2024 pending further case developments.

I. BACKGROUND AND POSITIONS

On July 27, 2023, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty, or the Company) filed a petition requesting that the Commission set temporary and permanent rates. In conjunction with its petition, the Company filed a motion for confidential treatment for certain materials included in its rate case filing. On September 11, 2023, Liberty filed a second motion for confidential treatment for material provided as part of the Company's response to a New Hampshire Department of Energy (DOE) data request, DOE Data Request 1-1. On April 17, 2024, Liberty filed a third motion for confidential treatment for certain information provided as part of the Company's engagement letter with PricewaterhouseCoopers LLP (PwC), its consultant.

The specific scope of the Company's July 27, 2023 motion for confidential treatment is as follows. In its motion, the Company notes that N.H. Code Admin. R. Puc 1604.01(a)(14) requires that a petitioning utility file certain documents with its

rate case, including a list of the officers and directors of the utility and their compensation for the last two years. Liberty requests that the Commission grant protective treatment, pursuant to the provisions of RSA 91-A:5, IV, and N.H. Code Admin. R. Puc 203.08, to the individual confidential compensation information of its officers and directors, which, Liberty states, is held in confidence and has not previously been made available to the public by the Company. (One exception relates to the Company's parent company Chief Executive Officer, Mr. Banksota, as his compensation has been previously disclosed pursuant to the laws governing publicly-traded companies). The Company further pointed to a past Commission ruling on confidentiality involving Liberty's electric utility affiliate, Order No. 26,271 (July 10, 2019), issued in Docket No. DE 19-064, wherein the aggregate compensation of directors and officers was disclosed, while the individual compensation of specific directors and officers was kept confidential by the Commission. Liberty states that it has maintained this redaction scheme in this rate case filing.

The scope of the Company's September 11, 2023 motion for confidential treatment is as follows. In its response to DOE Data Request 1-1, Liberty provided certain voluminous data schedules provided by a subscription service entered into by the Company, S&P Global Market Intelligence Services (S&P). Liberty states in its motion that "...S&P considers the database [at issue] to be their proprietary work product. S&P precludes its customers from providing the data to others unless confidentiality can be assured." Liberty September 11, 2023 Motion for Confidential Treatment at 2. The Company continues, "Liberty thus seeks confidential treatment of Attachment DOE 1-1.22 pursuant to the procedure outlined in Puc 203.08 and pursuant to the exemption from public disclosure of RSA 91-A:5, IV, which protects 'confidential' and 'commercial' information." *Id.*

The scope of the Company's April 17, 2024 motion for confidential treatment is as follows. As part of Liberty's April 17, 2024 filing of its engagement letter with PwC, the estimated pricing for PwC to perform its work for the Company was provided. Liberty seeks confidential treatment, pursuant to RSA Chapter 91-A and Puc 203.08, for this pricing information, which, Liberty states, is considered to be proprietary and confidential by PwC. Liberty further states that "PwC has expressed to the Company that it wishes to maintain the confidentiality of its pricing information because publicizing what PwC charges for the Company's project could provide a competitor with information that the competitor could use to its advantage when competing with PwC for future work." Liberty April 17, 2024 Motion for Confidential Treatment at 1-2.

Regarding the July 27, 2023 and September 11, 2023 Liberty motions for confidential treatment, both the DOE and the Office of the Consumer Advocate (OCA) stated at the September 21, 2023, hearing on temporary rates in this matter that they had no objection to those motions. Transcript of September 21, 2023, Public Hearing at 19-20. Regarding the April 17, 2024 Liberty motion for confidential treatment, no party filed an objection to the Company's motion.

On August 16, 2024, in response to a Commission procedural order issued in this docket on August 2, 2024, the DOE provided a status update for this proceeding wherein "the parties to this gas case" (the Company, DOE, and OCA) "...recommend that...the stay in this case be extended until October 15, 2024," with the concept that "[t]he parties intend to step up the attention devoted to gas settlement discussions once a settlement in the [Liberty] electric case [in Docket No. DE 23-039] is reached." DOE August 16, 2024 Status Update at 1. (The parties in Docket No. DE 23-039 have indicated to the Commission that a settlement agreement in that case is expected no earlier than October 11, 2024).

The Company's motions for confidential treatment, the DOE August 16, 2024 Status Update, and associated docket filings are posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-067.html>

II. 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). 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 furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires 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 Supreme Court has stated that the determination of whether information is confidential or private must be made "objectively, and not based on the subjective expectations of the party generating it." See *Union Leader Corp. v. NH. Housing Fin. Auth.*, 142 N.H. at 553. Moreover, the Court has found instructive the federal test for confidential information under which "the party resisting disclosure must prove that disclosure is likely to: (1) impair the State's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." *Id.* at 554 (quotation and brackets omitted).

In this case, through three separate motions, the Company seeks protection for three separate categories of financial and business information under RSA 91-A:5, IV. We agree with Liberty, as delineated in its motions, that the information contained within the applicable filings in this docket constitutes confidential and sensitive commercial or financial information under RSA 91-A:5, IV, and that Liberty, or their business counter-parties (i.e., S&P and PwC), possess a privacy interest in protecting the information in question. We therefore conclude that the Liberty, or counter-party, interest(s) in nondisclosure of the information identified in Liberty's motions outweighs the public's interest in disclosure of that information. Although the public may have an interest in that information to aid in understanding the Commission's analysis of the issues presented in this proceeding, we find that the public's interest in disclosure is outweighed by the Liberty, or counter-party, privacy interests in information that, if disclosed, could pose legitimate financial harm to or privacy risk to Liberty or its counter-parties.

Accordingly, pursuant to Puc 203.08(a), we grant the Liberty July 27, 2023, September 11, 2023, and April 17, 2024 motions for protective order and confidential treatment. 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.

With regards to a continued stay in this proceeding, pursuant to RSA 541-A:31 and N.H. Code Admin. Rules Puc 203.13 and 203:15, the Commission has the authority to direct the timing and process of an adjudicatory proceeding. That authority includes the power to stay or suspend activity in an adjudication when doing so would promote the efficient resolution of issues before the Commission. *See, e.g., Residents of Colonial Drive, Moultonborough*, Order No. 26,841 (June 8, 2023) at 7. Pursuant to RSA 365:28, “[a]t any time after the making and entry thereof, the [C]ommission may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify any order made by it. This hearing shall not be required when any prior order made by the [C]ommission was made under a provision of law that did not require a hearing and a hearing was, in fact, not held.” RSA 365:28.

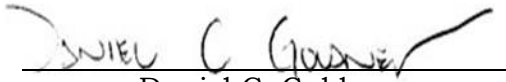
In light of the developments in this case, and the expectation by the parties that development of any settlement agreement in this matter would only commence after the finalization of a settlement agreement in Docket No. DE 23-039, the Commission hereby EXTENDS the stay in this proceeding to November 15, 2024 to accommodate such settlement negotiations in this instant Docket No. DG 23-067.

Based upon the foregoing, it is hereby

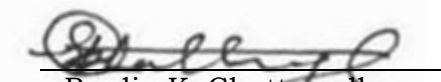
ORDERED, that the July 17, 2023, September 11, 2023, and April 17, 2024 Liberty motions for protective order and confidential treatment are GRANTED; and it is

FURTHER ORDERED, that the stay in this proceeding is EXTENDED until November 15, 2024.

By order of the Public Utilities Commission of New Hampshire this tenth day of October, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket#: 23-067

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