

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Iberdrola USA Enterprises, Inc.,

- and -

Liberty Utilities (EnergyNorth Natural Gas) Corp.

Docket No. DG 14-155

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

Iberdrola USA Enterprises, Inc. (“Iberdrola”), in accordance with Puc 203.08, hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment to certain information provided to the Commission Staff and the Office of Consumer Advocate (“OCA”) during the discovery process in the above-captioned docket. In support of its motion, Iberdrola states as follows:

1. On August 8, 2014, Iberdrola responded to data request Staff 1-28, which sought the following:

Ref. Dickinson Testimony, Bates p. 207, lines 8-18. Please provide the detailed calculation of the bill impact described here.

The referenced testimony described the likely increase to typical residential heating and commercial customer bills should the cost of entering into an Amended Operating and Propane Air Sales Supply Agreement be recovered from customers through New Hampshire Gas Corporation’s rates. In response to this data request, Iberdrola provided Attachment Staff 1-28, which includes a detailed analysis of the bill impacts as requested by Staff. Iberdrola now seeks confidential treatment of certain information within Attachment Staff 1-28 because Iberdrola’s

privacy interest in protecting sensitive “confidential, commercial, or financial information” outweighs public interest in the information.

2. Attachment Staff 1-28 contains information for which the Commission has already granted confidential treatment. Specifically, the Joint Petitioners attached a copy of a Stock Purchase Agreement (“SPA”) effecting the sale of all capital stock of New Hampshire Gas Corporation (“NHGC”) by Iberdrola to Liberty to their Joint Petition filed on June 6, 2014. Exhibit B to the SPA is a Settlement Agreement entered into between NHGC and Keene Propane Corporation (“KPC”) to resolve litigation pending in Cheshire County Superior Court. The Settlement Agreement provides for the payment of a certain sum of money by NHGC to KPC. In addition to being stated in the Settlement Agreement, the amount was also referred to in the Testimony of Mr. Thorn Dickinson.

3. Iberdrola moved for confidential treatment of this information on the grounds that it constitutes “confidential, commercial, or financial information” exempt from public disclosure under RSA 91-A:5, IV. The Commission granted Iberdrola’s unopposed motion by Order dated July 9, 2014, finding that the information constitutes “confidential and private financial information.” DG 14-155, Order No. 25,690 at 4, 5 (July 9, 2014).

4. The bill impacts analysis set forth in Attachment Staff 1-28 contains the above-referenced sum of money for which the Commission has already granted confidential treatment, as well as various figures that, if publicly disclosed, could be utilized in connection with publicly available information to calculate that confidential sum money. For the same reasons articulated in Iberdrola’s previous motion, this information constitutes “confidential, commercial, or financial information” that is exempt from public disclosure under RSA 91-A:5, IV.

5. RSA 91-A:5, IV states, in pertinent part, that records pertaining to “confidential, commercial, or financial information” are exempt from public disclosure. The analysis applied by the Commission for the confidentiality of sensitive commercial information “is essentially the same as for that regarding potential invasions of privacy, but for the fact that the information must also be determined to be confidential, commercial, or financial information, in addition to being information in which there is a privacy interest.” *EnergyNorth Natural Gas d/b/a National Grid NH*, Order No. 25,208 at p. 8 (March 23, 2011).

6. In determining whether to grant protective treatment, the Commission applies a three-step analysis developed by the New Hampshire Supreme Court. *Unitil Corp. & Northern Utilities*, DG 08-048, Order No. 25,014 at 3 (September 22, 2009) (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008)). The analysis first requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. Second, where such a privacy interest is at stake, the public’s interest in disclosure is assessed. *Lambert*, 157 N.H. at 382-83. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interest in non-disclosure. *Id.*

7. As Iberdrola explained in its previous motion, the amount of money paid by Iberdrola and / or its affiliates or subsidiaries to settle the KPC litigation constitutes “confidential, commercial, or financial information” in which Iberdrola has a critical privacy interest. If such information is disclosed, it will place Iberdrola and / or its affiliates or subsidiaries in a compromised negotiating position during settlement discussions in concurrent or future litigation. Opposing litigants will be able to assess the facts of a settled case in

connection with the amount paid in settlement, which could assist them in determining how much Iberdrola may be willing to pay to resolve another matter. This would undermine Iberdrola's position in such negotiations, and potentially harm it financially or hinder settlement discussions in pending or future litigation in which Iberdrola and / or its affiliates or subsidiaries are involved.

8. In addition to the amount paid in settlement, certain figures shown throughout Iberdrola's analysis of the impact on residential and commercial customer bills in Attachment Staff 1-28 are inextricably linked to and could be utilized to determine the confidential amount. As such, the Commission should extend the confidential treatment that it has already granted in Order No. 25,690 to any information in Attachment Staff 1-28 that could be used to calculate the confidential settlement amount.

9. As explained in the Joint Petition and the testimony supporting it, the amount paid in settlement will not be recovered through the rates of NHGC customers if the transfer of ownership is approved. To the extent that there is a public interest related to this benefit, it is in the rate impacts to customers of passing through the cost should the transaction not go forward. These impacts are disclosed and discussed in the Testimony of Thorn Dickinson. There is no prejudice to the public's interest in disclosure if the rate impacts are disclosed and the amount of the settlement, as well as related figures that can be utilized to determine that amount, remain confidential.

10. To the extent that there is any public interest in the amount paid in settlement of the litigation between NHGC and KPC, it is significantly outweighed by the harm that will be done to Iberdrola's privacy interests in maintaining the confidentiality of such sensitive information if the amount, as well as information that can be utilized to determine the amount, is

publicly disclosed. This is particularly true where, as here, Iberdrola has only redacted that information in Attachment Staff 1-28 that states or can be utilized to determine the confidential amount. For these reasons, the Commission should grant confidential treatment to the settlement amount described above and any figures set forth in Attachment Staff 1-28 that are linked to and can be utilized to determine that amount.

WHEREFORE, Iberdrola respectfully requests that the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment;
- B. Grant such other relief as is just and equitable.

Respectfully Submitted,

Dated: October 29, 2014

IBERDROLA USA
ENTERPRISES, INC.

MCLANE, GRAF, RAULERSON &
MIDDLETON, PROFESSIONAL
ASSOCIATION

By:



Steven V. Camerino, Esq.
Patrick H. Taylor, Esq.
11 South Main Street, Suite 500
Concord, NH 03301
Tel. (603) 230-4400
steven.camerino@mclane.com
patrick.taylor@mclane.com

Certificate of Service

I hereby certify that a copy of this Motion for Protective Order and Confidential Treatment has been hand delivered to the Public Utilities Commission and electronically served.



Patrick H. Taylor