

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES

Docket No. DG 14-180

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT OF
INTERNAL AUDIT REPORT PROVIDED TO OUTSIDE AUDITOR

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty” or the “Company”), through counsel, respectfully moves the New Hampshire Public Utilities Commission (the “Commission”), pursuant to Puc 203.08, to grant confidential treatment to the entire document titled *Internal Audit Report - Meter to Cash* (MTC Report), which Staff’s consultant requested as part of the “targeted audit” agreed to and ordered in this docket. In support of this motion, Liberty represents as follows:

1. The parties reached a settlement in the above-captioned delivery rate case. The *Stipulation and Settlement Agreement Regarding Permanent Rates* (Agreement) was filed as Exhibit 5 and was approved in Order No. 25,797 at 15 (June 26, 2015).
2. Section L of the Agreement provides, in part, “that a targeted audit shall be conducted by an independent consultant selected by the Commission following a competitive bid process. The scope of the targeted audit is outlined in Attachment 7.” Agreement at 7-8.
3. Attachment 7 states: “In its review, the consultant shall consider the results of the Company’s MTC Report that is currently being conducted.” Attachment 7 at 1.

4. The MTC Report, conducted by the Internal Audit division of Liberty Utilities Co., Liberty's parent company, was completed in October 2015. Staff's independent consultant requested a copy of the MTC Report, and Liberty intends to provide it subject to this motion.

5. Puc 203.08(a) states that the Commission "shall ... issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law" The rule requires Liberty to submit the document for which confidential treatment is sought,¹ provide specific reference to the legal basis for the confidentiality request, and give "a detailed statement of the harm that would result from disclosure." Puc 203.08(b).

6. The MTC Report is a comprehensive self-evaluation of the meter-to-cash processes for Liberty and for other LU companies (LU-Mid Sates and LU-CalPeco). The MTC Report, as its name suggests, reviewed account creation and management, collection and processing of meter data, billing, payments and collections, corporate services and support, and third party vendor services.

7. To gather information for the MTC Report, the LU audit group interviewed key personnel; reviewed relevant policies, procedures, and other supporting documentation; performed walk-throughs of selected meter-to-cash processes and activities to confirm the processes and controls in place; conducted testing to determine the operating effectiveness of key controls; and identified recommendations and improvement opportunities.

8. The Meter-to-Cash report falls within RSA 91-A:5, IV, which exempts from the statute's disclosure requirements records that constitute "confidential, commercial, or financial information. Based on *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), the Commission applies a three-step analysis to determine whether information should be protected

¹ Liberty has filed a copy of the MTC Report with this motion, under seal.

from public disclosure. *See, e.g. Public Service Co. of N.H.*, Order No. 25,313 at 11-12 (Dec. 30, 2011). The first step is to determine if there is a privacy interest at stake that would be invaded by disclosure. If so, the second step is to determine if there is a public interest in disclosure. The Commission has held that disclosure that informs the public of the conduct and activities of its government is in the public interest. Otherwise, public disclosure is not warranted. *Public Service Co. of N.H.*, Order 25,167 at 3 (Nov. 9, 2010). If there is an important privacy interest and a public interest in disclosure, the Commission must balance those interests. *Id.* at 3-4.

9. Here, Liberty has a clear privacy interest in the MTC Report, which describes in detail Liberty's company-specific internal customer service functions, policies and procedures and which identifies self-described operational deficiencies, recommendations and improvement plans.

10. There is no substantial public interest in disclosure of the MTC Report. The MTC Report is a self-critical document that was created in an effort to improve Liberty's policies and procedures regarding the topics analyzed in the report.

11. Given Liberty's substantial interest in confidentiality, the lack of a substantial public interest in disclosure, Liberty has established the requirements for confidential treatment under Puc 203.08.

12. Even if the Commission were to see some public value in disclosure, such benefit would be outweighed by "the harm that would result from disclosure." Puc 203.08(b)(3).

Disclosure would harm Liberty by making public its internal customer relations practices and self-critique, which could be used by Liberty's competitors. More important, disclosure would jeopardize Liberty's ability to obtain candid disclosures from its employees in the future. The LU audit interviewed employees with the understanding that they were conducting an internal and confidential review for the purpose of identifying potential areas for improvement. Public

disclosure of the MTC Report, even without the participants' names, would chill future participation.

13. The Commission has held that public interest served by disclosure under RSA 91-A is to inform the public about the activities of its government. Otherwise, public disclosure is not warranted. *Public Service Company of New Hampshire*, Order No. 25,617 at 3 (Nov. 9, 2010). There is no requirement or need to provide to the public with the nuts-and-bolts self-assessment contained in the MTC Report.

14. Finally, the Commission previously found to be confidential similar internal audits of customer service functions. In an order that resolved six motions for confidential treatment of six different types of documents related to Consolidated Edison's acquisition of Northeast Utilities, the Commission found "a legitimate interest in maintaining the privacy" of internal customer service audits "so as to encourage candid internal review."

Finally, the Joint Petitioners request confidential treatment of internal audit reports regarding the Joint Petitioners' customer service functions. According to the Joint Petitioners, such reports could provide competitors with unfair advantages by disclosing to them the companies' self-assessments of any operational weaknesses. The Joint Petitioners also contend that public disclosure of the audits would make future reports less likely to be fully candid and self-critical. We note, however, that several of the reports at issue are significantly out of date and, thus, the Joint Petitioners' privacy interest is somewhat attenuated. We agree that the Joint Petitioners have a legitimate interest in maintaining the privacy of such reports so as to encourage candid internal review, and in light of the lack of opposition to this motion we provisionally conclude that this interest outweighs the benefits of public disclosure.

Public Service Co. of N.H., Order No. 23,516 at 12 (June 23, 2000). The MTC Report is not stale, having been issued only a few weeks ago, making Order 23,516 stronger support for Liberty's request here.

15. For these reasons, Liberty asks that the Commission issue a protective order for the MTC Report that Liberty will provide to Staff's consultant.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment Regarding the MTC Report; 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 18, 2015

By:  _____

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Certificate of Service

I hereby certify that on November 18, 2015, a copy of this Motion has been forwarded to the service list in this docket.



Michael J. Sheehan