

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. D/B/A LIBERTY
UTILITIES

Re: Approval of Firm Transportation Agreement

Docket No. DG 14-380

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
REGARDING DISCOVERY RESPONSES

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or the “Company”) hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant protective treatment to certain confidential information contained in the Company’s responses to discovery requests in this docket. In support of this motion, the Company states as follows:

1. In this proceeding, the Company seeks Commission approval of a firm transportation agreement with Tennessee pursuant to which the Company would purchase on a firm basis 115,000 Dth per day of capacity for a 20 year term. On December 31, 2014, the Company submitted a Motion for Protective Order and Confidential Treatment for certain commercial terms of the Precedent Agreement which the Commission granted on February 13, 2015 at the prehearing conference. *See* February 13, 2015 Transcript at 34. The Company has provided additional confidential information in response to discovery requests for which it now seeks confidential treatment under RSA 91-A. This information falls into the following categories: (1) certain terms and conditions of asset management agreements to which the

Company is a party and related capacity release revenue information; (2) proprietary Platts data; and, (3) customer identifying information.

2. RSA 91-A:5,IV exempts from public disclosure 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 from public disclosure. See, e.g. *Public Service Company of New Hampshire*, Order No. 25,313 at 11-12 (December 30, 2011). The first step is to determine if there is a privacy interest at stake that would be invaded by the disclosure. If such an interest is at stake, 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 Company of New Hampshire*, Order 25,167 at 3 (November 9, 2010). If both of these steps are met, the Commission balances those interests in order to weigh the importance of keeping the record public with the harm from disclosure of the material for which protection is requested. *Id.* at 3-4.

Commercial Terms of Asset Management Agreements and Related Cost Mitigation Data (Staff 2-9(b), Staff 2-13 and Technical Session 31)

3. Staff 2-9(b) sought information about the Company's value of excess interstate pipeline capacity, Staff 2-13 sought copies of the Company's asset management agreements, under which a third party manages the Company's pipeline capacity in order to maximize its value, and Technical Session Request 31 sought information about the capacity release revenue generated by the Company. The Company produced its agreements with BP Energy Company and Repsol North America Corporation and identified the pricing, credit and exposure terms as confidential, along with an exhibit to Tech Session 31 showing capacity release revenue

generated under these agreements. Copies of each of these confidential responses are included as Attachment A to this motion.

4. Under *Lambert*, the first inquiry is whether there is a privacy interest in this information. The Company and its counterparties have an expectation of privacy in key terms such as pricing and related commercial provisions in supply agreements based on existing Commission practice. Commission rules recognize the need to protect gas supply contracts through their explicit acknowledgment that “pricing and delivery special terms of supply agreements” provided in cost of gas proceedings are accorded confidential treatment. *See* Puc 201.06(a)(26)(b). Based on the Commission’s routine treatment of pricing and delivery special terms in cost of gas proceedings, the Company has a reasonable expectation of privacy that the same type of information will be accorded confidential treatment, albeit when introduced in another type of docket. The next step in the analysis is to consider whether there is a public interest in disclosure of the information, including whether release of the information lends any insight into the workings of government as it relates to this case. Here, public disclosure of the capacity supply pricing and release terms, and the resulting revenue, would not materially advance the public’s understanding of the Commission’s analysis in this proceeding or shed any light on its internal workings. The public’s interest is in whether on all overall basis the terms of the Precedent Agreement are in the public interest, not the particular financial terms of the Company’s agreements with third parties regarding release of its existing capacity. Even if one were to conclude that there is a public interest in disclosure of the commercial terms of the asset management agreements and the revenue generated, the harm that could occur as a result of that disclosure is well outweighed by the privacy interests at stake. In particular, the Company would likely lose negotiating power in the future if the terms upon which it was willing to do business

were made public. Other asset managers could use this information to gain a leg up in negotiations with the Company, which would ultimately be detrimental to customers who receive the benefit of these revenues. Thus, the Company submits that there is no public interest in disclosing these key contract terms and requests that they be accorded confidential treatment.

Proprietary Platts Data (Plan 1-3 and Staff 4-30)

5. Plan 1-3 requested data “showing the ‘historical and forward looking basis relationships’” and price basis at various locations while Staff 4-30 sought pricing information based on certain delivery locations. In response, the Company produced the basis price at various locations that it derived from Platts, a commercial subscription service for which it pays a fee. Copies of each of these confidential responses are included as Attachment B to this motion.

6. The Company’s Platts subscription agreement provides that the Platts data is “confidential proprietary content of McGraw-Hill and shall not be shared with any third party.” Under *Lambert*, the first question is whether there is a reasonable expectation of privacy in the information in question. In this case, the Company asserts that Platts has such an expectation. Its sale of the information is the source of its business revenue, and as a result, it has a reasonable basis to expect that its customers will maintain it in confidence in accordance with the terms of the parties’ contract. The next step in the analysis is to consider whether there is a public interest in disclosure of the information, including whether release of the information lends any insight into the workings of government as it relates to this case. Disclosure of the Platts market data does not provide any insight into how the Commission conducts its work but rather reflects how the market for natural gas is priced. As a result, this prong of the test is not met. Should the Commission weigh these two factors – Platts’ expectation of privacy versus the public interest in

disclosure of market pricing, the scales tip significantly in favor of withholding the information, particularly where it is the very product that Platts sells to generate revenue. On this basis, the Commission should grant the Company's request for confidential treatment.

Customer Identifying Information (Plan 4-15)

7. In Plan 4-15, Plan requested information about complaints received by the Company regarding its Nashua propane plants. In response, the Company produced a spreadsheet identifying the account number and phone number of each customer who had called and expressed concern about the propane plants, a copy of which is included as Attachment C. In *Lamy v. Public Utilities Commission*, 152 NH 106 (2005), the New Hampshire Supreme Court held that electric service customers have a privacy interest in their names and home addresses in the context of voltage complaints submitted to the Commission. This case is not unlike *Lamy*, where customers have called the Company to express concern about some aspect of the Company's operations, and as a result, the Company has identifying information associated with the complaint. Based on this holding, the Company asserts that these customers have a privacy interest in their contact information. The Commission must next consider whether release of this customer-identifying information will reveal information about the workings of the Commission. The Company submits that it does not. Public knowledge of these customers' addresses and phone numbers will not shed light on how the Commission conducts its work. Knowledge of this customer information is not necessary for the public to understand the import of the complaints. The public will be able to determine how the Commission weighs these complaints by reviewing the transcript of the hearing and the Commission's final order in the case. Given that there is no public interest in this identifying information, the Commission should issue a protective order covering the confidential information in Attachment Plan 4-15.

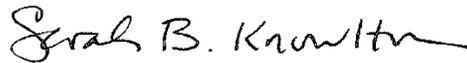
WHEREFORE, EnergyNorth respectfully requests that the Commission:

- 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 UTILITIES

By its Attorney,



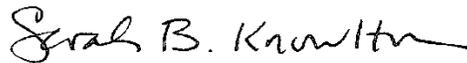
Date: June 23, 2015

By: _____

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Certificate of Service

I hereby certify that on June 23, 2015, a copy of this Motion has been forwarded to the Consumer Advocate.



Sarah B. Knowlton