

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DG 15-289

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

Petition for Franchise Approval

**Motion for Protective Order Providing for the Confidential Treatment
of Certain Discovery Responses**

Now comes Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or “the Company”), by and through its attorneys, Orr & Reno, P.A., and moves for a protective order providing for the confidential treatment of particular information contained in the Company’s responses to certain discovery requests in this docket. In support of this Motion, EnergyNorth states the following:

1. In this proceeding, the Company is seeking approval of its request for a natural gas franchise to serve customers in Lebanon and Hanover. In accordance with the procedural schedule in this docket and Commission rules and practice, the Company has provided confidential information to Commission Staff and the Office of Consumer Advocate (“OCA”) in response to discovery requests. In the course of providing such confidential responses, as authorized under Admin Rule Puc 203.08, the Company indicated that it had a good faith basis for seeking confidential treatment of information in the responses or attachments to the responses and that the Company would submit a motion for confidential treatment of this information at or before the commencement of the hearing in this proceeding.

2. A brief description of the confidential information contained in the responses to data requests from Commission Staff, or in attachments to the responses, is set forth below. The Company moves at this time for confidential treatment of the identified information that has already been provided to Staff and the OCA under a confidential designation in the following responses to data requests or attachments, copies of which are attached to this Motion and marked with the following Exhibit letters:

- Exh. A: scalability of the storage facility and timed capital investments and a comparison of residential prices over the last five years for various fuel sources (Response to Staff 1-1 and Attachment 1-1.1);
- Exh. B: the cost of land and facilities, the projected revenue requirement and projected annual dekatherms (“ADTH”) sales (Response to Staff 1-2);
- Exh. C: the status of negotiations with Dartmouth College (Response to Staff 1-9);
- Exh. D: the design plans for the LNG/CNG facility (Response to Staff 1-10 and Attachments 1.10.1, 1-10.2, 1-10.3 and 1-10.4);
- Exh. E: identification of anchor customers and their respective loads (Response to Staff 1-11);
- Exh. F: expected cost of the land for the fueling facilities (Response to Staff 1-14);
- Exh. G: the expected costs for LNG regasification trailers (Response to Staff 1-15);
- Exh. H: information regarding responses to RFP for least cost supplier of propane for the Keene Division (Response to Staff 1-16);
- Exh. I: assumptions the Company used to calculate revenue projections and the break-even point (Response to Staff 2-3);
- Exh. J: the Option Agreement for the land for the fueling facilities (Attachment to Response to Staff 2-5);
- Exh. K: where the three anchor customers would be in relation to existing EnergyNorth customers in terms of anticipated requirements (Attachment to Response to Staff 2-7);
- Exh. L: property assessment of land for fueling facilities performed (Attachment 2-9.1 to Response to Staff 2-9);
- Exh. M: costs of acquiring a decompression skid for temporary service (Attachment to Response to Staff 2-11);
- Exh. N: landfill gas collection rate modelling results (Attachment to Response to Staff 2-14);
- Exh. O: the 10 potential customers with the greatest annual load usage and other data (Attachment to Response to Staff 3-1);
- Exh. P: the annual ADTH projected sales necessary to go forward with the project (Response to Staff 3-3);

- Exh. Q: the expected ADTH of landfill gas and pricing information (Response to Staff 3-4); and
- Exh. R: anticipated capital investments and distribution revenues information (Attachment to Response to Staff 3-6);
- Exh. S: the break-even point from the Response to Staff 2-3 (Response to Arwen 3-2).

3. RSA 91-A:5,IV exempts from public disclosure records that constitute confidential, commercial, or financial information. Admin. Rule Puc 203.08(a) authorizes the Commission upon motion to “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.” The standard the Commission uses in determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure is the analysis articulated in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-383 (2008) and *Lamy v. N.H. Public Utilities Commission*, 152 N.H. 106, 110-113 (2005). See, e.g. *Public Service Company of New Hampshire*, 96 NH PUC 780, 785-787 (2011). Under this analysis the Commission first determines “whether the information is confidential, commercial or financial information, ‘and whether disclosure would constitute an invasion of privacy.’” *Unitil Energy Systems, Inc.*, 96 NH PUC 196, 216 (2011). If a privacy interest is implicated, the Commission then balances the asserted private confidential, commercial or financial interest against the public’s interest in disclosure in order to determine if disclosure would inform the public of the government’s conduct. *Id.* If it does not, then “disclosure is not warranted.” *Id.* See, e.g. *Power New England, LLC*, Order No. 25,528 at 5-7 (June 25, 2013) (“disclosure of private contractual terms could result in a competitive disadvantage to both NAPG and its vendor”).

4. EnergyNorth submits that the information designated as confidential in the above described responses and attachments should be treated as confidential commercial information exempt from disclosure under RSA 91-A:5. As noted in the description of information contained in the responses and attachments included above, this information includes projected capital investments, revenues and sales information; the break-even point; documents associated with the land on which the Company plans to build the fueling facilities; design plans for the facilities; specific data pertaining to existing and prospective customers; landfill gas information specific to the Lebanon landfill; the costs of certain equipment needed to run the facilities; information pertaining to negotiations with a prospective customer; and supplier RFP information from the Keene Division. Because this information is being provided in response to data requests in a docket opened to consider whether or not to grant a franchise, and because there is another docket considering another petitioner for the same franchise area and because neither applicant has viewed sensitive commercial or financial information from the other docket, there is arguably a somewhat different privacy interest here than what the Commission may face in typical dockets. The Company submits that the information noted above meets the test the Commission uses in determining whether or not to grant protective treatment to this information. The Commission has already granted requests for confidential treatment of forecasted financial information, cost and revenue numbers, and investment plans in DG 15-155, Order No. 25,867 (February 17, 2016) at 5-7 and in this docket, DG 15-289, Order No. 25,868 (February 19, 2016) at 6 (where the Commission granted the request for confidential treatment of the Attachment to the Response to Staff 3-9 in this docket, with the exception of information showing estimated customer rates).¹

¹ In compliance with this Order, EnergyNorth filed a newly redacted copy of the Response to Staff 3-9 which

5. The Commission's analysis of the balancing of interests as articulated in Orders 25,867 and 25,868 extends equally to the designated information contained in Exhibits A through Q attached hereto. This information is clearly confidential, commercial or financial, and public disclosure would pose economic harm not only to the Company, but also to existing and prospective customers and third party contractors. Because disclosure would also constitute an invasion of privacy, a privacy interest is implicated. Both EnergyNorth and the customers and contractors must safeguard this information to protect their respective positions in commercial transactions. Because EnergyNorth's private, confidential, commercial and financial interests and those of existing and prospective customers and contractors outweigh the public's interest in disclosure, the information should be protected. Conversely, disclosure will not inform the public of the government's conduct. Public disclosure of this information would not materially advance the public's understanding of the Commission or this particular proceeding at this point in the proceeding. Finally, the harm that would occur to EnergyNorth's and the existing and prospective customers' and contractors' interests outweighs the interest in public disclosure. It would be extremely disadvantageous to EnergyNorth, its commercial partners and customers if it were required to disclose this information to the public.

Wherefore, EnergyNorth respectfully requests that the New Hampshire Public Utilities Commission:

- A) Grant this Motion for Protective Order providing for Confidential Treatment of the discovery responses and attachments identified herein; and
- B) Grant such other relief as may be just and equitable.

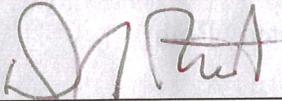
makes the rate information public, and the Company provided Ms. Arwen with a non-disclosure agreement, and once she signed that agreement, an unredacted copy of the Response to Staff 3-9.

Respectfully submitted,

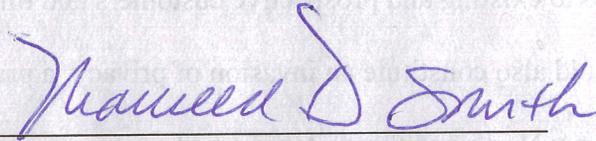
Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

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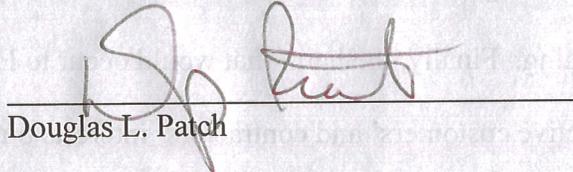
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Dated: March 10, 2016

Certificate of Service

A copy of this Motion has been served by email this 10th day of March 2016 on the service list in DG 15-289.

Dated: March 10, 2016



Douglas L. Patch

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