

**STATE OF NEW HAMPSHIREPUBLIC UTILITIES COMMISSION
DG 18-092**

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

**Petition for a License to Construct and Maintain a Natural Gas Pipeline
Beneath the Ashuelot River in Keene**

Objection to Liberty Utilities' Motion for Protective Order Related to Discovery Responses

On November 26, 2018, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a/ Liberty Utilities (Liberty or the Company) filed a Motion for Protective Order Related to Discovery Responses in this matter. Staff of the Public Utilities Commission (Staff) hereby objects to this motion as it pertains to data response Confidential Attachment Clark 1-20, which is a map prepared by Liberty of its Keene distribution system (the Attachment), and states as follows:

1. The purpose of RSA chapter 91-A is to ensure public access to information that informs it about the conduct and activities of its government. *See Reid v. New Hampshire Attorney General*, 169 N.H. 509, 532 (2016). Disclosure of information may be required unless an exemption under RSA 91-A:5 applies.
2. Under the New Hampshire Code of Administrative rules Puc 203.08(b), a party moving for confidential treatment of information is required to specify: (1) what information should not be disclosed; (2) what legal exemption to disclosure applies; and (3) the harm that disclosure would cause. *See* Puc 203.08(b) (1)-(3).
3. Liberty's motion does not satisfy the requirements of Puc 203.08(b), because it does not state what exemption to disclosure under RSA 91-A:5 applies or what harm disclosure of the Attachment would cause. It simply references an undefined "security measure."

Motion at 3. Liberty has failed to meet its burden of proving that the Attachment is exempt from disclosure under RSA 91-A:5. *Grafton Cty. Attorney's Office v. Canner*, 169 N.H. 319, 322 (2016) (stating that party seeking confidential treatment of information bears burden of proof).

4. Liberty seeks confidential treatment of the Attachment for security purposes, stating that it “shows precisely where the pipes and other facilities are located within the City of Keene.” Motion at 3. Staff disagrees with the characterization that the Attachment shows precisely where the pipes and other facilities are located. To the contrary, the Attachment is a rudimentary street map that shows Liberty’s system of gas distribution pipes in the barest of detail. The Attachment does not show which side of any street any given pipe is on, and it does not show the pipes in relation to buildings, other utilities, parks, rivers, or other natural or man-made features. Further, the Attachment does not show pressures, flow directions, materials, sizes or which type of gas commodity is used in which pipe (*i.e.*, propane air or natural gas). The Attachment contains only general information that could be obtained through casual observation made while walking down public streets and sidewalks in Keene and looking for gas meters. In Staff’s view, the Attachment lacks sufficient detail to raise any security concern and thus, from a safety standpoint, there is no reason to protect this map from disclosure.
5. Liberty’s Motion states “[a]s a security measure, the Company seeks to maintain confidentiality of the detailed maps of its distribution system, which is consistent with the

federal Office of Pipeline Safety's own practice of removing pipeline maps from its website."¹

6. Staff disagrees with Liberty's reference to OPS's practice for two reasons. First, the PHMSA does not protect the location of transmission pipelines from public disclosure. The PHMSA maintains the National Pipeline Mapping Systems website <https://www.npms.phmsa.dot.gov/> which shows the location of gas transmission pipelines. This website can be accessed by government entities and the general public. Second, any OPS practice or directive would apply only to interstate transmission pipelines, not to distribution lines, like Liberty has in Keene.
7. In summary, Staff contends that Liberty's motion does not satisfy the requirements for seeking confidential treatment outlined in Puc 203.08(b). Further, Staff maintains that protecting Attachment Clark 1-20 from public disclosure will not improve security or safety. The information sought to be protected could be obtained by casual observation while walking down public streets and sidewalks in Keene. Finally, the federal OPS does not protect transmission pipeline locations from public disclosure and, in any event, its practices do not apply to Liberty's distribution system.

WHEREFORE, for the reasons set forth hereinabove, the Staff respectfully requests that the Commission deny Liberty Utilities' Motion for Protective Order concerning Confidential Attachment Clark 1-20.

¹ Office of Pipeline Safety (OPS) is part of the Pipeline Hazardous Materials and Safety Administration (PHMSA) of the U.S. Department of Transportation.

Respectfully submitted,

Staff of the Public Utilities Commission

By its Attorney,



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I hereby certify that, on December 6, 2018, a copy of this Objection has been hand-delivered to the Commission and has been sent electronically to the Service List in this matter.



Paul B. Dexter