

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 16-852

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

Motions for Confidential Treatment and for Contempt

Order Granting Confidential Treatment and Denying Motion for Contempt

ORDER NO. 26,158

July 16, 2018

This order grants confidential treatment of information provided by prospective Liberty customers in the Hanover and Lebanon franchise area and denies the motion for contempt filed by Dr. Jonathan Chafee.

I. PROCEDURAL HISTORY

This matter arises out of a petition by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty) for approval of a franchise in Hanover and Lebanon. Along with its petition, Liberty filed a motion for confidential treatment of information contained in attachments WJC-3 and WJC-8 to the written testimony of William J. Clark. Intervenors Ariel Arwen and Dr. Chafee filed an objection to confidential treatment, and the Office of the Consumer Advocate filed a letter in support of that objection.¹

Following the hearing on the merits of the matter, the Commission conducted the three-step test required by law. The Commission found that much of the information Liberty sought to protect constituted confidential and commercial information, and that Liberty's commercial interests and its third-party-advisors' and customers' business and privacy interests outweighed the public's interest in reviewing the protected information. *Liberty Utilities*, Order

¹ Ms. Arwen subsequently moved to Vermont and ceased to be an intervenor. *See* Hearing Transcript of September 7, 2017, at 8.

No. 26,109 at 23-24 (March 5, 2018). The Commission also found that Liberty's request was "over-inclusive" in that Liberty had over-redacted the materials, removing some non-confidential information in the version of the filing that was available to the public. Specifically, the Commission found that some of the information Liberty sought to protect was already publicly available and that most of the privacy interests and competitive harm raised by Liberty could be resolved by redacting potential customers' names from the documents. *Id.* at 24-25. The Commission directed Liberty to refile its documents with appropriate redactions and a revised motion for protective treatment by March 20.

By April 4, Liberty had not yet refiled its documents, and Dr. Chaffee filed a motion for contempt, requesting that the Commission sanction Liberty for failing to comply with the over-redaction provisions of Order No. 26,109. Liberty refiled its supporting documents with fewer redactions and a revised motion for confidential treatment on April 12, 2018. Dr. Chafee filed a timely objection and Liberty filed a response. When it filed its response, Liberty withdrew its request for confidential treatment of a document referred to as "the Kleen letter of intent" and provided an unredacted copy of that document.

II. POSITIONS OF THE PARTIES

A. Liberty

Liberty refiled its supporting documents with substantially fewer redactions. In its revised motion for confidential treatment, the Company stated that it now seeks confidential treatment of only a combined 3-4 pages of information as opposed to approximately 150 pages it originally redacted. Liberty provided tables that detail the former and current extent of the redactions, the type of information that remains redacted, and the interest protected by each remaining redaction. *Revised Motion for Protective Order and Confidential Treatment* at 6-10.

In its objection to Dr. Chaffee's motion for contempt, Liberty stated that it did not refile within the 15 days required by Order No. 26,109 "[d]ue to an oversight" and apologized. Liberty claimed that its delay in filing did not prejudice any party.

B. Dr. Chaffee

Dr. Chaffee disagreed with Liberty's redaction of the "Kleen letter of intent," and the redaction of the current fuel and usage data columns on a table of potential customers (Bates Page 80R). Dr. Chaffee argued that the redactions are improper because Liberty placed the entire Kleen letter of intent into evidence in Docket No. DG 15-289. He also argued that Dartmouth College and Dartmouth Hitchcock Medical Center's fuel type had already been publicly revealed by Dartmouth College and by a third party in a different Commission docket. Jonathan Chaffee's Objection to *Revised* Motion for Protective Order and Confidential Treatment at 2-3. In his original objection, Dr. Chaffee purported to recreate the tables held confidential by Liberty by inserting the publicly known information. Objection to Liberty Utilities' Motion for Protective Order and Confidential Treatment at 3-4.

Dr. Chaffee requested that the Commission sanction Liberty Utilities, arguing that Liberty failed to file its revised redactions within the 15 days and did not comply with the redaction requirements of Order No. 26,109. Dr. Chaffee alleged that Liberty consistently redacts too much information in its filings which he believes impedes participation and fosters distrust.

III. COMMISSION ANALYSIS

The questions before us are narrow because we have already determined that information in the documents that Liberty seeks to protect is confidential and protected by exemptions to RSA 91-A. *See* Order No. 26,109. Our inquiry here is limited to whether Liberty has appropriately redacted that confidential information from the refiled documents that will be made available to the public. Liberty substantially reduced the redactions in its most recent filing.

Having reviewed the refiled documents, we find that Liberty's redactions meet the guidelines we set forth in Order No. 26,109 and the requirements of RSA 91-A.

Dr. Chaffee took exception with Liberty's redaction of only two of the refiled documents. The first exception regards the "Kleen letter of intent." In its response to Dr. Chaffee's objection, Liberty recognized that the Kleen letter of intent was already in the public domain and withdrew its request for confidential treatment of that letter. Dr. Chaffee's second exception was to the fuel type and usage data of potential customers listed in the table on Bates Page 80R of Liberty's revised attachments to Mr. Clark's testimony. Dr. Chaffee claimed that the redacted information on the table is already in the public domain. Having reviewed the information provided by Dr. Chaffee which he claims was already in the public domain and the information in the non-redacted table provided to the Commission by Liberty, we find that the information regarding fuel type and usage differs from the information in Dr. Chaffee's possession. We therefore cannot find that the information in the table is in the public domain. Instead, we find that Liberty appropriately redacted the fuel type and usage information of its potential customers in conformance with Order No. 26,109.

We will not hold Liberty in contempt at this time because we do not find that Liberty has acted with intent to frustrate Commission processes. Nonetheless, it is clear that Liberty did not focus sufficient time and attention on its legal obligations set forth by order, or in its attempts to comply with Commission rule, precedent, and practice regarding the redaction of confidential information in its filings. Our rules regarding the redaction of confidential information have the purpose and design of affording the public its right to access public information under RSA 91-A in a forthright, transparent, and speedy manner. *See* N.H. Code Admin. Rules Puc 201.04 and Puc 203.08.

The success of the Commission's process depends first on the good faith efforts of filing parties to identify and redact only the specific information that is entitled to an exemption under

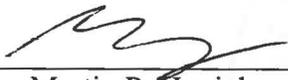
RSA 91-A. While we understand that filing parties may sometimes make judgment calls with which we disagree, we fully expect participants in our proceedings to make the necessary effort to narrowly tailor their redactions. In future filings, we expect Liberty to be more precise.

Based upon the foregoing, it is hereby

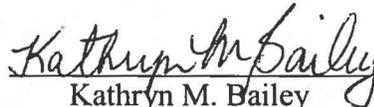
ORDERED, that Liberty's revised request for confidential treatment is GRANTED; and it is

FURTHER ORDERED, that Dr. Jonathan Chaffee's motion for contempt is DENIED.

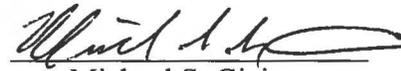
By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 2018.



Martin P. Honigberg
Chairman

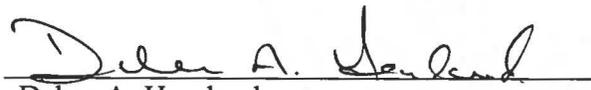


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director