

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP. D/B/A LIBERTY
UTILITIES

**Re: IR 15-124 Investigation into Potential Approaches to Ameliorate Adverse Wholesale
Electricity Market Conditions in New Hampshire**

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
REGARDING DISCOVERY RESPONSES

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (“Granite State” 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. The Commission opened this investigation to address the cost and price volatility issues currently affecting wholesale electricity markets in New Hampshire. The Commission directed Staff to investigate with electric distribution utilities the potential means of addressing the market problems that currently exist. To that end, Staff met informally with stakeholders and propounded requests for information and asked for formal written responses to those requests.

2. On July 23, 2015, the Company provided written responses to a set of Staff’s follow-up requests, and stated that the response to the first question¹ was confidential. That question sought the identity of Anchor Shippers on the Supply Path segment of the Tennessee Gas Pipeline Northeast Energy Direct Project (TGP-NED). Liberty Utilities (EnergyNorth Natural Gas) Corp, d/b/a Liberty Utilities (“EnergyNorth”), an affiliate of the Company, in

¹ The Commission Staff’s first question reads as follows:

In response to Staff Request 4-10 in NHPUC Docket DG 14-380 enquiring about the prospect of Liberty contracting for capacity on the Supply Path segment of TGP-NED project, Liberty responded that it intends to file a precedent agreement with the New Hampshire Public Utilities Commission for capacity on the Supply Path. Does Liberty expect other Anchor Shippers to purchase capacity on the NED Supply Path? If so, please identify those shippers.

response to a discovery request in Docket No. DG 14-380, stated that it intends to file a precedent agreement with the Commission regarding the Supply Path segment of the TGP-NED within the next two months.

3. The Company is requesting protective treatment of the identities of the other Anchor Shippers. EnergyNorth and other local distribution companies have entered into non-disclosure agreements with Tennessee Gas Pipeline. If the identities of the other parties are disclosed, such disclosure could impair EnergyNorth's ability to enter into other arrangements in the future involving a consortium-type approach, which would disadvantage EnergyNorth's and Granite State's customers by depriving them of the advantage of potentially more attractive terms and conditions available to consortiums.

4. 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.

5. Applying this three-part test, the first inquiry is whether there is a privacy interest in this information. The Company and the other Anchor Shippers have an expectation of privacy due to the agreement by all parties to maintain confidentiality of all consortium negotiations. If there is a risk of the information being released prematurely, it could have a chilling effect on the willingness of the parties to work together on similar joint efforts in the future, thus impacting the Company's ability to avail itself of the combined negotiating power of the group. Such an impact would have a detrimental effect on customers, as it would result in an inability of the

Company to take advantage of potentially more attractive terms and conditions in future negotiations.

6. The next step in the analysis is to determine whether there is a public interest in disclosure of the information, including whether such disclosure provides insight into the workings of government related to this case. In this circumstance, public disclosure of the other Anchor Shippers would not advance the public's understanding of the workings of government. In this case, the public interest is in identifying and addressing existing market problems that result in price volatility in wholesale electricity markets. Clearly, the identities of the other Anchor Shippers would not provide any such insight.

7. While the Company avers the first two tests have not been met, even if the Commission finds they have, the harm that could result from public disclosure of the identities of the other Anchor Shippers outweighs any potential benefit of such disclosure. As noted previously, the disclosure of the identities of the Anchor Shippers could have a chilling effect on the willingness of parties to work with the Company on similar joint efforts in the future, thus impacting the Company's ability to avail itself of the combined negotiating power of the group. Such an impact would have a detrimental effect on customers, as it would inhibit the Company's ability to take advantage of potentially more attractive terms and conditions in future negotiations. Therefore, the Company submits that there is no public interest in disclosing this information.

8. For these reasons, the Company requests that the Commission issue a protective order preventing the public disclosure of the identities of the other Anchor Shippers on the Supply Path project.

WHEREFORE, Granite State 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 (GRANITE
STATE ELECTRIC) CORP. D/B/A
LIBERTY UTILITIES

By its Attorney,

A handwritten signature in black ink, appearing to read "R. J. Ritchie", enclosed within a thin black rectangular border.

Date: August 7, 2015

By: _____

Ronald J. Ritchie
Legal Counsel and Government
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