

THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Liberty Utilities (Granite State Electric) Corp.  
d/b/a Liberty Utilities

Docket No. DE 17-189

Petition to Approve Battery Storage Pilot Program

**Motion for Protective Order Related to Discovery Responses**

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities, through counsel, respectfully moves the Commission pursuant to Puc 203.08 for a protective order granting confidential treatment two documents provided during discover in this matter.

In support of this motion, Liberty represents as follows:

1. Liberty notified the parties pursuant to Puc 203.08 to consider the data response attachments listed below to be confidential without then filing a motion. The rule allows such a claim of confidentiality:

In lieu of immediately filing a motion for confidential treatment, a party providing a document to the commission staff in discovery that the party wishes to remain confidential shall accompany the submission with a written statement that:

(1) The party submitting such documents has a good faith basis for seeking confidential treatment of the documents pursuant to this rule; and

(2) Such party intends to submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in such proceedings.

Puc 203.08(d).

2. The rule requires the party asserting confidentiality to file a motion to ensure the documents remain confidential:

Documents submitted to the commission or staff accompanied by a written statement pursuant to (d) shall be treated as confidential, provided that the party submitting the documents thereafter files a motion for confidential treatment at or prior to the commencement of the hearing in the proceeding.

Puc 203.08(e).

3. Liberty thus files this motion for confidential treatment of Confidential Attachment Staff 1-44, the *Tesla API Manual*, and Confidential Attachment OCA 1-12, pricing contained in a Sunrun proposal.
4. An API or “application program interface” is a set of routines, protocols, and tools for building software applications, and essentially specifies how software components should interact. Confidential Attachment 1-44 is the “Tesla API Manual,” and it contains detailed descriptions of how Tesla’s proprietary GridLogic platform operates. Tesla understandably considers this information highly confidential. Its disclosure could cause Tesla substantial economic and competitive harm. Tesla allowed Liberty to produce the manual in discovery on the express condition that its confidentiality would be maintained.
5. Confidential Attachment OCA 1-12 was Sunrun’s proposal to provide Liberty with a battery storage system for use in this pilot, a proposal Sunrun made in the nature of an informal RFP. The proposal contains Sunrun’s pricing for various components of its systems, software, and other services, which Sunrun considers to be highly confidential and competitively sensitive. Liberty only redacted the pricing figures on page 5 of the proposal. The balance of the proposal is not confidential.
6. The Tesla API Manual in its entirety and the Sunrun pricing information highlighted or redacted on page 5 of Confidential Attachment OCA 1-12 are “confidential, commercial, or financial information” that are exempt from disclosure under RSA 91-A:5, IV. The Company thus seeks confidential treatment of those documents.

7. Puc 203.08(a) states that the “commission shall upon motion 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.”
8. RSA 91-A:5, IV, exempts from public disclosure records that constitute “confidential, commercial, or financial information.” The Commission applies the three-step test from *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), to determine whether information should be protected from public disclosure. See, e.g. *Public Serv. Co. of N.H.*, Order No. 25,313 at 11-12 (Dec. 30, 2011). The first step is to determine whether 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 whether there is a public interest in disclosure. 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 Serv. Co. of N.H.*, Order 25,167 at 3 (Nov. 9, 2010). If these first two these steps are met, the Commission weighs the interests of keeping the record public against the harm from disclosure. *Id.* at 3-4.
9. First, there is a clear privacy at stake in both the Tesla and Sunrun information. These are third parties – not the regulated utility – who are participants in a highly competitive market. Tesla’s technical information and Sunrun’s pricing are likely among the most important, sensitive, and confidential categories of information for these companies.
10. Second, there is little public interest in disclosure of this information. The Tesla manual contains complicated, detailed, and highly technical information about the inner workings of its software. And as for the Sunrun information, Liberty did not choose

Sunrun's systems for the battery storage pilot, so Sunrun's pricing is simply not relevant to the Commission's review. Neither the Tesla nor Sunrun information would inform the public about the Commission's review of Liberty's proposal as now embodied in the Settlement Agreement. It is either far too detailed or simply irrelevant.

11. Therefore, under the *Lambert* test there is no need to conduct the balancing test and the information should remain confidential. And even if the Commission were to balance the harm Tesla and Sunrun would suffer from disclosure against the interest in making the information public, the scales would tip decidedly in favor of confidentiality.

WHEREFORE, Liberty respectfully asks that the Commission:

- a. Grant confidential treatment to the discovery responses described above; and
- b. Grant such other relief as is just and reasonable.

Respectfully submitted,  
Liberty Utilities (Granite State Electric) Corp.  
By its Attorney,



Date: November 28, 2018

By: \_\_\_\_\_  
Michael J. Sheehan, Senior Counsel #6590  
116 North Main Street  
Concord, NH 03301  
Telephone (603) 724-2135  
[michael.sheehan@libertyutilities.com](mailto:michael.sheehan@libertyutilities.com)

Certificate of Service

I hereby certify that on November 28, 2018, a copy of this motion has been electronically forwarded to the service list.



By: \_\_\_\_\_  
Michael J. Sheehan