

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 17-189

**LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP.
D/B/A LIBERTY UTILITIES**

Petition to Approve Battery Pilot Storage Program

Order Granting Motion for Confidential Treatment and Rule Waiver

ORDER NO. 26,366

June 17, 2020

This order grants Liberty’s motion for confidential treatment of specified portions of a cybersecurity report filed in this docket. In addition, the order grants Liberty’s request for a rule waiver to file the unredacted version of that report in paper copies only, without providing an electronic copy.

I. PROCEDURAL HISTORY

On January 17, 2019, the Commission conditionally approved implementation of a proposed battery storage pilot program by Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (“Liberty” or “Company”). *See Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities*, Order No. 26,209 (January 17, 2019). The primary goal of the pilot program is to achieve customer savings through peak load reductions. *Id.* at 37. The Commission conditioned its approval of the pilot program on Liberty meeting certain cybersecurity requirements. *Id.* at 39-40.

The Commission expressed concern regarding “potential cybersecurity risks implicated by the integration of utility-owned equipment and systems installed behind-the-meter at customers’ premises” and sought confirmation that “utility-owned equipment, including vendor software and databases, do not incrementally increase customer risk or distribution system risk

for potential manipulation or exposure of data used for planning, operational, and maintenance purposes.” *Id.* The Commission directed that:

Liberty must file a written certification signed by Mr. Eck, and also by a senior executive responsible for cybersecurity initiatives, confirming that such evaluations have been completed and conclusions reached, together with documentation describing in reasonable detail the supporting methodologies used in such determinations and include with a copy of its amended Cybersecurity Plan.

Id.

Most recently, the Commission approved an extension of time for Liberty to implement Phase 1 of the battery pilot program, subject to certain specified conditions. *See* Order No. 26,337 (March 9, 2020), and Order No. 26,364 (June 15, 2020).

On March 9, 2020, Liberty filed a Motion for Confidential Treatment and for Waiver of Puc 203.03(a) (Motion), requesting confidential treatment of its Initial Cyber Security and Impact Assessment Report (Report). Liberty’s Motion also requested waiver of New Hampshire Code of Administrative Rules, Puc 203.03, to permit the Company to waive the electronic filing requirement and file only paper copies of the unredacted version of the Report. No party objected to or took any other position with respect to Liberty’s Motion.

The Motion and subsequent docket filings, other than any information for which confidential treatment has been requested of or granted by the Commission, are posted on the Commission’s website at <https://www.puc.nh.gov/Regulatory/Docketbk/2019/17-189.html>.

II. LIBERTY’S MOTION

Liberty requested confidential treatment of the Report, citing statutory exemptions to public disclosure under RSA chapter 91-A. Motion at 2. Liberty stated that two statutory exemptions apply: (1) RSA 91-A:5, IV, which exempts confidential, commercial, and financial information, and (2) RSA 91-A:5, XI, which exempts records pertaining to cybersecurity plans, including vulnerability testing and assessment materials. *Id.*

In support of its position that the exemption for confidential, commercial, and financial information applies, Liberty stated that the Report “contains competitively sensitive information including the configuration and capabilities of Tesla’s systems, how they interact with Liberty’s systems, and references to relationships between Liberty, Tesla, and third parties.” *Id.* at 3. According to the Company, the Report consists of competitively sensitive information and is subject to a confidentiality agreement between Liberty and Tesla. *Id.* at 4-5.

In support of its position that the cybersecurity exemption applies, Liberty stated that the Report contains a comprehensive evaluation of cybersecurity risks. *Id.* Specifically, according to the Company, disclosure “would provide a roadmap of how to hack Liberty’s and Tesla’s systems.”

Liberty argued that there is no public interest in the disclosure of the confidential information contained in the Report. *Id.* The Company stated that public interest in disclosure would only relate to information that lends insight into the workings of the Commission, and whether it was wise, feasible, and prudent to implement the battery storage pilot program. *Id.* at 5-6. Liberty asserted that, even if a valid public interest were found, the identified risks to the Company, Tesla, and pilot program would outweigh any public interest. *Id.* at 6.

In its analysis, Liberty cited numerous Commission orders applying the three-step analysis set forth in *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), to determine whether a privacy interest in non-disclosure outweighs the public’s interest in disclosure. *Id.*

In support of its request for a waiver of Puc 203.03(a), Liberty stated that the waiver would be appropriate because of the highly sensitive nature of the Report’s contents. *Id.* at 7-8. Liberty also asserted that an electronic copy of the Report within the Commission’s custody would increase the risks of malicious hacking or inadvertent disclosure. *Id.* According to the Company, those factors satisfy the requirements for a rule waiver because the waiver would

serve the public interest and not disrupt the orderly and efficient resolution of matters before the Commission. *Id.*

III. COMMISSION ANALYSIS

A. Motion for Protective Order

Pursuant to Puc 203.08, the Commission must issue a protective order upon finding that a document is entitled to confidential treatment under RSA 91-A:5, or other applicable law. In making such a finding, the Commission considers the document for which confidential treatment is requested, the statutory or common law basis for confidentiality, and the harm that would result from disclosure. Puc. 203.08(b). Finding that a document is confidential pursuant to a RSA 91-A:5 exemption requires narrowly construing the exemption, and balancing application of the exemption against the public's interest in disclosure. *Reid v. N.H. Attorney General*, 169 N.H. 509, 520 (2016). Liberty argued that exemptions IV and XI under RSA 91-A:5 apply.

The first step of the analysis – to determine whether a record qualifies as exempt under RSA 91-A:5, IV as confidential, commercial, or financial information – requires a showing that disclosure “is likely: (1) to impair the [applicant’s] ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *Union Leader Corp. v. N.H. Housing Fin. Auth.*, 142 N.H. 540, 554 (1997) (quotation omitted).

Like other RSA 91-A:5, IV exemptions, the second step of the analysis requires a balancing test using a three-step analysis to determine whether disclosure will result in an invasion of privacy. *Union Leader Corp. v. Town of Salem*, 173 N.H. ___, ___ (decided May 29, 2020) (slip op. at 11-16) (citing *Prof'l Firefighters of N.H. v. Local Gov't Ctr.*, 159 N.H. 699, 707 (2010)).

Here, Liberty asserted several grounds for finding the Report confidential. The Company stated that the Report contains competitively sensitive information, including the configuration and capabilities of Tesla's systems, how they interact with Liberty's systems, and references to relationships between Liberty, Tesla, and third parties. In addition, the Company entered into a confidentiality agreement with Tesla regarding the records, in which the information was identified as confidential and the Company has agreed to treat it as such. As a result, disclosure of the Report could cause substantial harm to the Company's competitive position and make it difficult or impossible for the Company to gain access to confidential material provided by vendors like Tesla in the future. For these reasons, we find the Report constitutes a confidential record as required for the first step of the analysis under RSA 91-A:5, IV.

Whether a record is exempt under RSA 91-A:5, XI is a matter of first impression for the Commission. The plain language of that provision first requires evaluation of whether the record fits within the categories of records identified in the statute, *i.e.*, cybersecurity plans, vulnerability testing and assessments materials, detailed network diagrams. RSA 91-A:5, XI. Whether disclosure "would aid an attempted security breach or circumvention of law" must then be considered, in addition to weighing the harm that would come from disclosure against the public's interest in disclosure. *Id.*

The record at issue is an assessment and report specifically pertaining to cybersecurity. The Report includes cybersecurity plans that detail the configuration and interaction of information technology systems and networks. As such, we find that it clearly falls within the categories identified in RSA 91-A:5, XI.

In addition, Liberty stated that the information contained in the Report would aid in an attempted security breach and could provide a "roadmap" to hacking its systems. As a result, we

find that the Report would aid in an attempted security breach or circumvention of the law as required for non-disclosure.

Both exemptions relied on by Liberty require balancing application of the exemption against the public's interest in disclosure. *Reid*, 129 N.H. at 520. Liberty claims that the public has no interest in disclosure of the records. We disagree. We have previously acknowledged the public's interest in such information. In Order No. 26,209, the Commission stated concerns that utility owned equipment installed behind-the-meter at customer premises may incrementally increase risks to both the customer and the distribution system. In addition, pilot program participants may have a significant interest in the information relied upon by the Commission to determine that potential cybersecurity risks have been mitigated or are otherwise acceptable. Similarly, it is conceivable that other Liberty electric customers may be legitimately interested in the information used to determine that potential risks to the distribution system also have been mitigated or are otherwise acceptable.

The Company also has significant security and competitive interests in nondisclosure as set forth above. Although the necessary balancing in this request involves significant interests, we find that the Company's interest in non-disclosure outweighs the public's interest in disclosure. We therefore grant Liberty's Motion for a protective order. This decision is subject to our ongoing authority, on our own motion; or on the motion of Staff, any party, or member of the public, to reconsider our determination. *See* Puc 203.08(k).

B. Waiver of Puc 203.03(a) Electronic Filing Requirement

Under Puc 201.05(a), the Commission shall waive the provisions of any of its rules if it finds that the waiver serves the public interest and will not disrupt the orderly and efficient resolution of matters before the Commission. To determine the public interest, the Commission may waive a rule if: (1) compliance with the rule would be onerous or inapplicable given the

circumstances of the affected person; or (2) the purpose of the rule would be satisfied by an alternative method proposed. Puc 201.05(b).

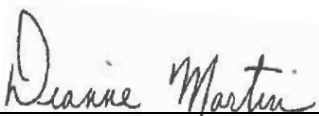
Liberty is seeking to file the unredacted Report in paper copies only without filing an electronic copy. We find that a waiver of Puc 203.03(a), which requires an electronic filing, is appropriate and serves the public interest in light of the highly sensitive nature of the confidential information set forth in the Report. The purpose of the rule will be satisfied by the alternative method proposed, as paper copies of the unredacted Report have been filed. We agree that waiver of the rule will not disrupt the orderly and efficient resolution of matters before the Commission.

Based upon the foregoing, it is hereby

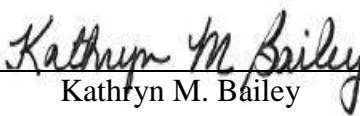
ORDERED, that Liberty's Motion for Confidential Treatment is GRANTED, subject to the provisions of N.H. Admin. R., Puc 203.08(k); and it is

FURTHER ORDERED, that Liberty's request for waiver of N.H. Admin. R., Puc 203.03(a) is GRANTED.

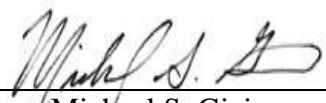
By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 2020.



 Dianne Martin
 Chairwoman

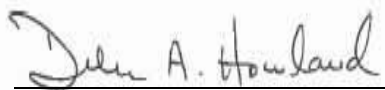


 Kathryn M. Bailey
 Commissioner



 Michael S. Giaimo
 Commissioner

Attested by:



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Service List - Docket Related

Docket# : 17-189

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