

State of New Hampshire
Public Utilities Commission

Docket No. DE 19-064

**LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP.
d/b/a LIBERTY UTILITIES**

Distribution Service Rate Case

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 preserving the confidentiality of certain data responses and confidential attachments provided during discovery 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 responses and 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 the following data responses and attachments, with the legal basis for confidentiality cited:

- a. Confidential Attachment OCA 1-2.1.1.xlsx and Confidential OCA 1-2.2.xlsx, which contain proprietary information of the Company's consultant, Concentric Energy Advisors. RSA 91-A:5, IV (exempting from disclosure "confidential, commercial, or financial information"). Disclosure of these proprietary models would cause Concentric competitive harm. The Commission has previously granted confidential treatment to Concentric's proprietary models. *Liberty Utilities (Granite State Electric) Corp.*, Order No. 26,005 at 15 (Apr. 12, 2017).
- b. Portions of Confidential Revised Attachment OCA 1-10.a.xlsx, which contains compensation information of specific job titles, and thus can be traced to individual employees. RSA 91-A:5, IV (exempting from disclosure "[r]ecords pertaining to internal personnel practices [and] personnel ... files whose disclosure would constitute invasion of privacy"). Disclosure of such compensation information is well-recognized to constitute an invasion of privacy. *See Liberty Utiltieis (Granite State Electric) Corp.*, Order No. 26,271 (July 10, 2019) (distinguishing between compensation of certain directors, which is not confidential, and the compensation of other employees, which deserves protection); *EnergyNorth Natural Gas, Inc.*, Order No. 25,208 at 5 (Mar. 23, 2011) ("we have noted that as to non-officer employees, the disclosure of their information could cause harm by making it easier for other companies to recruit the employees away from the utility and potentially causing discord among individuals within the company. Accordingly, we find that there is a privacy interest at stake here.") (Citations omitted).

- c. Portions of Confidential Attachment OCA 1-17.a.1 contains salary information for specific positions which can be traced to specific individuals, protected by RSA 91-A:5, IV. *See* Paragraph 3.b. above.
- d. Response to OCA 1-37 contains specific compensation of a specific employee. RSA 91-A:5, IV. *See* Paragraph 3.b. above.
- e. Confidential Attachment OCA 2-49 contains salary information for specific positions that can be traced to specific individuals. RSA 91-A:5, IV. *See* Paragraph 3.b. above.
- f. Confidential Attachment OCA 2-50.c and Confidential Attachment OCA 2-50.d contain salary information for specific positions that can be traced to specific individuals. RSA 91-A:5, IV. *See* Paragraph 3.b. above.
- g. Confidential Attachment OCA 6-15.xlsx includes links to Confidential Attachment OCA 1-2.2.xlsx, which contains proprietary information of the Company's consultant, Concentric Energy Advisors that is "confidential, commercial, or financial information" protected from disclosure by RSA 91-A:5, IV. *See* Paragraph 3.a. above.
- h. Confidential Attachment OCA 7-1.a contains salary information of specific positions, which can be traced to specific individuals, which constitutes confidential personnel information protected by RSA 91-A:5, IV. *See* Paragraph 3.b. above.
- i. Confidential Attachment OCA 7-5.xlsx contains compensation information for specific employees. RSA 91-5, IV. *See* Paragraph 3.b. above.
- j. Confidential Attachment OCA 7-10.xlsx is comprised primarily of individual employee names, positions, and compensation information related to the LTIP, which is confidential personnel information protected from disclosure by RSA 91-A:5, IV. *See* Paragraph 3.b. above.
- k. Confidential Attachments OCA 7-34.a.1 through a.3 and Confidential Attachments OCA 7-34.b.1 through b.4 are internal management reports that contain confidential financial and operational

information and projections, in which the Company has significant privacy interests, the disclosure of which would provide competitors with detailed information about internal processes causing competitive harm to the detriment of the Company and of its customers. *See* RSA 91-A:5, IV; *EnergyNorth Natural Gas*, Order No. 25,208 (Mar. 23, 2011); *Northern Utilities*, Order No. 25,289 (Nov. 18, 2011).

- l. Confidential Attachment OCA TS 1-16.a.1.xlsx through Confidential Attachment OCA TS 1-16.a.4.xlsx contain employee names, positions, and detailed compensation information, which is confidential personnel information protected by RSA 91-A:5, IV. *See* Paragraph 3.b. above.
- m. Confidential Attachment OCA TS 2-2.xlsx contains compensation information for specific employees and is thus confidential personnel information protected from disclosure by RSA 91-A:5, IV. *See* Paragraph 3.b. above.
- n. Confidential Attachment OCA TS 2-7.a.xlsm contains compensation information for specific employees and is thus confidential personnel information protected from disclosure by RSA 91-A:5, IV. *See* Paragraph 3.b. above.
- o. The response to Staff 3-14 contains a list of the specific titles of those employees who received severance pay during the test year. Given the particular job titles involved, one could determine the names associated with those positions. Thus, the redacted information constitutes confidential personnel information protected by RSA 91-A:5, V. *See* Paragraph 3.b. above.
- p. The information redacted in Confidential Attachment Staff 5-7 consists of names of the customers who asserted the claims described in the attachment. The information is thus confidential customer information specifically protected from disclosure by RSA 363:38, and more generally by RSA 91-A:5, IV.
- q. Confidential Attachment Staff 6-2.b contains salary information for specific job positions, which could be traced to individual employees and

thus constitutes confidential personnel information protected by RSA 91-A:5, IV. *See* Paragraph 3.b. above.

- r. Staff 6-4, related to severance payments, contains specific job titles, which could allow one to identify the specific employee referenced in these answers. Therefore, the information is confidential personnel information protected by RSA 91-A:5, IV. *See* Paragraph 3.b. above. *See* Paragraph 3.b. above.
- s. The Confidential Attachments provided in the response to Staff 7-1a and Staff 7-1c contain proprietary information of the Company's consultant, Concentric Energy Advisors, that is "confidential, commercial, or financial information" protected from disclosure by RSA 91-A:5, IV. *See* Paragraph 3.a. above.
- t. Confidential Attachment Staff 8-14.2 and Confidential Attachment Staff 8-14.5.docx contain confidential financial information of Liberty Utilities Co. that is protected from disclosure. Liberty Utilities Co. is not publicly traded, does not disclose its financial information, and takes reasonable steps to protect the confidentiality of its financial information, and thus has a reasonable expectation of privacy in the information. RSA 91-A:5, IV. *See* Paragraph 3.k. above.

4. The rule requires a motion for confidential treatment to contain "a detailed description of the types of information for which confidentiality is sought," reference to the legal support for confidentiality, a "statement of the harm that would result from disclosure," and "any other facts relevant to the request for confidential treatment." Puc 203.08(b).

5. Since each data response contains information required by the rule, which information also appears above, the public versions of those responses are attached to this motion and incorporated by reference.

6. The Commission recently provided the following description of its analysis of requests for confidential treatment of discovery responses:

RSA Chapter 91-A ensures public access to information about the conduct and activities of government agencies or “public bodies” such as the Commission. Disclosure of records may be required unless the information is exempt from disclosure under RSA 91-A:5. Among other types of information, RSA 91-A:5, IV exempts “confidential, commercial, or financial information.” The party seeking protection of the information has the burden of proving that confidentiality and/or privacy interests outweigh the public’s interest in disclosure. *Grafton County Attorney’s Office v. Canner*, 169 N.H. 319, 322 (2016). Puc 203.08(b) requires a motion for confidential treatment to include, among other things, a “[s]pecific reference to the statutory or common law support for confidentiality” and a “detailed statement of the harm that would result from disclosure.” Liberty asserted a confidentiality interest, which requires Liberty to “prove that disclosure is likely to: (1) impair the information holder’s ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.” *Hampton Police Ass’n, Inc. v. Town of Hampton*, 162 N.H. 7, 14 (2011). The benefits of disclosure to the public are then weighed against the interest(s) in nondisclosure. *See id.*

Order No. 26,352 at 3 (April 30, 2020).

7. After review of the discovery responses and attachments, the law supporting confidentiality as to each, and the balancing of the “benefits of disclosure to the public” against “the interests in nondisclosure,” the Company respectfully asks the Commission to find the above information warrants confidential treatment.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant confidential treatment to the data responses and attachments listed above; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

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



Date: June 4, 2020

By:

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Certificate of Service

I hereby certify that on June 4, 2020, a copy of this Motion has been electronically forwarded to the service list in this docket.



Michael J. Sheehan