

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DE 21-138

LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP. d/b/a LIBERTY  
2022 Vegetation Management Program Plan

**Motion for Protective Order Related to Discovery Responses and Exhibit 2**

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty, through counsel, respectfully moves the Commission pursuant to RSA 91-A:5, IV and Puc 203.08 for a protective order preserving the confidentiality of attachments provided during discovery in this matter, and which the Department of Energy (Department) has marked as Exhibit 2.

In support of this motion, Liberty states as follows:

1. Liberty notified the parties pursuant to Puc 203.08 to consider the attachments to a data response described 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. Puc 203.08 also covers assertions of confidentiality as to information otherwise provided to the Commission, which applies to these same documents as they are being offered as

Exhibit 2 at hearing: “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, or other applicable law based upon the information submitted pursuant to (b) below.” Puc 203.08(a).

3. In both instances, the rule requires the party asserting confidentiality to file a motion to ensure the documents remain confidential. As to data responses, the party claiming confidentiality must first assert confidential treatment in its response:

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). And as to the motion for confidential treatment of the data responses and of other confidential information, the motion for confidential treatment shall contain:

- (1) The documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought;
- (2) Specific reference to the statutory or common law support for confidentiality; and
- (3) A detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.

Puc 203.08(b).

4. Liberty files this motion for confidential treatment of Confidential Attachment DOE 1-6.2 and Confidential Attachment DOE 1-6.3 which were provided in discovery and which the Department intends to offer as Exhibit 2 at hearing. These documents are contracts with Asplundh Tree Expert, LLC, and The Davey Tree Expert Company, vegetation management vendors (the “vendors”).

5. The confidential information consists of the vendors' specific rates that it charges for labor, for use of its equipment, and other specific cost items which form the basis for their overall cost to provide the vegetation management services for Liberty.
6. The legal basis for confidentiality is RSA 91-A:5, IV, which protects from disclosure "confidential, commercial, or financial information," which the Commission has consistently found to apply to similar third-party pricing. *See* Order No. 26,280 (Aug. 1, 2019).
7. The "harm that would result from disclosure" of this specific pricing would be the potential harm to the vendors' competitive interests. Competitors could use the information to their advantage – and the vendors' disadvantage -- in competing for employees and in competing for contracts. Both vendors treat this information as confidential.
8. The Commission regularly finds that third party pricing warrants confidential treatment especially when, as here, there is public information that satisfies the public's right to know the basis for the Commission's decisions. Liberty does not seek confidential treatment of the total contract amounts for various components of the work to be performed under these contracts. That is, the public can see how much Liberty is paying for its vegetation management services. Liberty only seeks confidential treatment of the granular pricing terms.
9. Considering the broad pricing information that will remain available to the public as compared to narrow and specific cost items for which the Company seeks confidential treatment demonstrates that the proposed confidential treatment appropriately balances the public's right to understand the basis for the Commission's decisions through disclosure of the various contract totals and the vendors' interests in protecting their competitively sensitive, more granular, pricing.

10. Liberty's request for confidential treatment of the project cost estimates is consistent with the requirements of New Hampshire's Right to Know law, which expressly exempts from public disclosure any records pertaining to "confidential, commercial or financial information." RSA 91-A:5, IV; *see Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). Application of this exemption requires "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." Order No. 25,014 at (Sept. 22, 2009).
11. Applying the above standards, Liberty asks the Commission to grant confidential treatment to the marked portions of the vendor contracts in the data responses described above and as they appear in Exhibit 2.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant confidential treatment to Confidential Attachment DOE 1-6.2, Confidential Attachment DOE 1-6.3, and Exhibit 2;
- B. Grant such further relief as is just and equitable.

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

By its Attorney,



Date: April 25, 2022

By: \_\_\_\_\_  
Michael J. Sheehan, Esq. #6590  
114 North Main Street  
Concord, NH 03301  
Telephone (603) 724-2135  
[Michael.Sheehan@libertyutilites.com](mailto:Michael.Sheehan@libertyutilites.com)

Certificate of Service

I hereby certify that on April 25, 2022, a copy of this Motion has been forwarded to the service list.

A handwritten signature in cursive script, appearing to read "M. Sheehan", written in black ink.

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Michael J. Sheehan