

DT 04-180

GRANITE STATE TELEPHONE, INC.

**Notification of Granite State Telephone, Inc.
Pursuant to RSA 369:8, III(a) and (b)**

Order Approving Motion for Confidential Treatment

ORDER NO. 24,432

February 11, 2005

I. PROCEDURAL HISTORY AND BACKGROUND

On October 1, 2004, Granite State Telephone, Inc. (GST) filed with the New Hampshire Public Utilities Commission (Commission) a notification pursuant to RSA 369:8, II(b) of the proposal by Yankee Telecom, Inc. (Yankee), the holding company for GST, to redeem all of the outstanding shares of Yankee stock owned by Hobart G. Rand. Under the redemption, all Yankee Stock will be held by the Susan Rand King Irrevocable Trust of 2000, the Christian H. Rand Irrevocable Trust of 2000 and the Catherine R. Gheradi Irrevocable Trust of 2000 (the Rand Family Trusts). Additionally, the Rand Family Trusts will have ultimate control of GST rather than Hobart G. Rand. The notification further stated that Yankee would fund the redemption through a loan from CoBank ACB (CoBank), and that the proceeds from the loan by CoBank would also be used to repay the outstanding indebtedness of GST to the United States Rural Utilities Service and the Rural Telephone Bank (RUS/RTB).

Included in GST's notification was a Motion for Confidential Treatment (Motion) requesting confidential treatment for five exhibits submitted with the notification. The exhibits were copies of the three Rand Family Trusts, the Valuation Report of Gordon Associates, Inc. regarding Yankee, and the Commitment Letter of CoBank. According to paragraph 12 of the notification,

“[t]hese additional exhibits relating to information regarding the holding company’s ownership, valuation and finances are highly confidential and include confidential information relating to affiliates that engage in competitive business activities as well as personal state planning information regarding the Rand family, disclosure of which would constitute an invasion of privacy. The commitment letter from CoBank contains a confidentiality restriction prohibiting disclosure of its contents to anyone other than this Commission or as may be required by law. The information contained in Exhibits 2-6 is maintained in strict confidence by GST and its affiliates and the Rand family and is not public knowledge or published elsewhere. Accordingly, GST respectfully asserts that Exhibits 2-6 are exempt from disclosure under RSA 91-A:5 and RSA 378:43 and moves that they be accorded confidential treatment pursuant to those statutes and Rule Puc 204.06.”

On November 5, 2004, the Office of Consumer Advocate (OCA) notified the Commission that it would be participating in this docket on behalf of residential ratepayers consistent with RSA 363:28. By letter to Commission Staff dated November 8, 2004, GST furnished responses to information requests which had been propounded by the Staff. The cover letter stated in part,

“[i]n accordance with RSA 378:43, single copies of the proprietary version are being filed with the Staff and the OCA to be held in confidence in accordance with RSA 378:43, I(a). GST represents that the proprietary version contains confidential financial and commercial information and information pertaining to competitive services. GST further represents that the proprietary information is not general public knowledge or published elsewhere and that measures have been taken by GST to prevent dissemination of the information in the ordinary course of business.”

GST’s claim for confidential treatment extended to its responses to Confidential Staff Information Requests 1.1, 1.2, 1.3 and Staff Information Requests 1.20 and 1.34, all of which were marked confidential.

On November 12, 2004, GST filed with the Commission an amendment to the notification stating that as part of the redemption, Yankee would make an equity cash

contribution to GST, which GST would apply to the repayment of the RUS/RTB debt. This notification was made pursuant to RSA 369:8, II(a).

On November 23, 2004, GST filed a letter with the Commission confirming its understanding that the 60-day notice period under RSA 369:8 would run from the filing date of the amendment, namely, November 12, 2004. GST also reported that Yankee was seeking an extension from CoBank of the closing date to reflect the extension of the notice period resulting from the amendment.

On January 7, 2005, Staff submitted a Stipulation executed by GST, OCA and Staff, together with GST's responses to information requests propounded by Staff. The Stipulation requested the Commission to determine that the transactions described in GST's notification, as amended, will not adversely affect the rates, terms, service or operation of GST within New Hampshire pursuant to RSA 369:8, subject to the conditions contained in the Stipulation,¹ thus obviating the need for any further approval of the transactions by the

¹ The conditions set forth in paragraph 9 of the Stipulation were as follows:

- a. None of the costs of the redemption transaction, including but not limited to interest and principal repayments of the Co-Bank loan, will be reflected in GST's rates subject to the jurisdiction of this Commission.
- b. To the extent that GST incurs any costs in connection with the proposed transaction, such costs will be recorded in non-operating (below the line) accounts.
- c. The redemption transaction shall not result in any change in the carrying value of GST's assets or any acquisition premium or other adjustment that would affect rate base of GST.
- d. In the event of any rate case before this Commission based on rate-of-return regulation, GST will propose a hypothetical capital structure that adjusts the actual capital structure to include a long term debt component of not less than 36% with a cost of such debt based on an annual interest rate of 5.45%.
- e. GST shall continue to make the capital investments that are necessary to maintain service quality at levels consistent with past practice. Without limiting the generality of the foregoing, GST shall, unless otherwise authorized by the Commission, make capital investments during the fiscal years 2005, 2006 and 2007 such that the average annual capital investment shall not decrease more than 15% from the average of 2003 and 2004.

Commission in accordance with RSA 369:8. In addition, the Stipulation provided that GST's Motion for Confidential Treatment of certain exhibits accompanying GST's notification should be granted.

On January 18, 2005, the Commission issued a secretarial letter confirming that the transaction is considered approved as filed by operation of law, effective January 11, 2005, and noting that the Commission would rule on the Motion in a separate order.² This order sets forth the Commission's ruling on the Motion.

II. COMMISSION ANALYSIS

GST relies on RSA 378:43 (Information Not Subject to Right-To-Know Law), RSA 91-A (Right-To-Know Law) and N.H. Code Admin. Rules Puc 204.06 (Confidential Treatment) in support of its Motion. RSA 378:43, I(a) provides that,

“[a]ny information or records that a telephone utility provides to the public utilities commission or its staff as part or in support of a filing with the commission or in response to a request that the information or records be provided to the commission or its staff shall be maintained confidentially and shall not be considered public records for purposes of RSA 91-A, if the information or records satisfy the requirements of paragraph II.”

² The letter stated in part,

“RSA 369:8,II contemplates that the Commission will ordinarily take action on a notification within 60 days. In this docket, the 60 period commenced with the filing of the amended notification on November 12, 2004. Notwithstanding the expiration of the 60 day time period on January 11, 2004, the Commission has determined that the Stipulation filed with the Commission on January 7, 2005 constitutes a further amendment to the notification and is binding on GST to the same extent as if it were contained in the notification, as amended on November 12, 2004. GST is now free to close on the refinancing and change in control transactions consistent with the terms of the Stipulation and with the representations and statements made in the notification, as amended, and GST's responses to the information requests made by Staff and the OCA.

Pursuant to RSA 369:8 II (2), the transaction as amended on November 12, 2004 is considered approved as filed by operation of law, effective January 11, 2005. The Commission will rule on the Motion for Confidential Treatment in a separate order.”

In order to obtain such confidential treatment, Paragraph II states that the utility shall represent to the Commission,

“that the information or records are not general public knowledge or published elsewhere;
that measures have been taken by the telephone utility to prevent dissemination of the information or records in the ordinary course of business; and that the information or records:

- (a) [p]ertain to the provision of competitive services; or
- (b) [s]et forth trade secrets that required significant effort and cost to produce, or other confidential, research, development, financial, or commercial information, including customer, geographic, market, vendor, or product-specific data, such as pricing, usage, costing, forecasting, revenue, earnings, or technology information not reflected in tariffs of general application.” RSA 378:43, II.

While the Motion does not expressly state that “measures have been taken by [GST] to prevent dissemination of the information or records in the ordinary course of business,” the CoBank commitment letter prohibits “disclosure of its contents to anyone other than the Commission or as required by law.”

The New Hampshire Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception for “confidential, commercial or financial information . . . and other files whose disclosure would constitute invasion of privacy.” RSA 91-A:5, IV. Our applicable rule, N.H. Code Admin. Rules Puc 204.06, is designed to facilitate the implementation of RSA 91-A as it has been interpreted by the courts.

The case law addressing the issue of whether information is considered confidential, commercial or financial information indicates that “analysis of both whether the information sought is ‘confidential, commercial or financial information’ *and* whether disclosure would constitute an invasion of privacy” is required. *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 NH 540, 552 (1997). Whether information is “confidential” is

an objective test; it is not based on the subjective expectations of the party generating the information. *Id.* at 553. Under one frequently used test, in order to show that the information is sufficiently confidential to justify nondisclosure, “the party resisting disclosure must prove that the disclosure is likely to (1) impair the [State’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.” *Id.* at 554 (citation omitted). This test illustrates that the emphasis is on the potential harm that results from disclosure, rather than on promises of confidentiality or whether the information has customarily been regarded as confidential. *Id.* at 554. These precepts were reaffirmed in *Goode v. N.H. Legislative Budget Assistant*, 148 NH 551, 554-555 (2002).

When exemption from disclosure is claimed on privacy grounds, the “the nature of the requested document and its relationship to the basic purpose of the Right-to-Know Law” must be examined. *Union Leader Corp. v. New Hampshire Housing Finance Authority*, *supra* at 554 (citation omitted). Such a review focuses on whether the party seeking confidential treatment has shown that the information would not inform the public about the state agency’s activities or that a valid privacy interest, on balance, outweighs the public interest in disclosure. *Id.* at 555. A three step analytical approach is employed. First, the issue of whether there is a privacy interest at stake that would be invaded by disclosure” is evaluated. *N.H. Civil Liberties Union v. City of Manchester*, 149 NH 437, 440. If not, RSA 91-A mandates disclosure. Second, the public interest in disclosure is assessed. Disclosure “should serve the purpose of informing the public about the conduct and activities of their government.” *Id.* Finally, the public interest

in disclosure is balanced against “the government interest in nondisclosure and the individual’s privacy interest in nondisclosure.” *Id.*

We find that GST has provided a credible argument that certain of the information for which protection is sought in the Motion is commercially or financially sensitive. In addition, we find that GST has provided a credible argument that disclosure of the other information for which protection is sought would constitute an unwarranted invasion of privacy.

We also note that the OCA and Staff fully support the Motion as part of the agreement set forth in the Stipulation filed on January 7, 2005. In balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are persuaded that the interest of GST and related entities and persons in non-disclosure outweigh the public’s interest in obtaining access to the information. We will therefore grant the Motion at this time. Consistent with our practice, the protective treatment provisions of this Order are subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider the protective order in light of RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that GST’s Motion for Confidential Treatment filed with the Commission on October 1, 2004 is GRANTED subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider the protective order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this eleventh day
of February, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director & Secretary