

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

RE: GRANITE STATE ELECTRIC COMPANY D/B/A LIBERTY UTILITIES

DOCKET NO. DE 13-018

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
REGARDING BORDERLINE SALES TESTIMONY**

Granite State Electric Company d/b/a Liberty Utilities (“Liberty” or the “Company”), in accordance with Puc 203.08, hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment to information contained in the Company’s default service filing regarding the status of negotiations with National Grid on compensation to the Company for borderline sales to Massachusetts Electric Company’s customers. In support of this motion, the Company states as follows:

1. On December 16, 2013, Liberty submitted its default service filing to the Commission in advance of the December 19 hearing in this docket. The Company’s testimony included an update on the status of its borderline sales negotiations with National Grid. As described in the non-confidential portion of the testimony, the Company has been in negotiations with National Grid for nearly a year in which the Company seeks payment from Massachusetts Electric Company (“MECO”) for electric sales by Granite State to approximately 186 of MECO’s customers that are served by a Liberty circuit.

2. On October 1, 2012, the Company and MECO entered into a borderline sales agreement in which MECO agreed to compensate Liberty for electric sales to its customers from October 1, 2012 and thereafter. Under that agreement, each month, the Company bills MECO its

transmission, commodity and distribution rates for service to the so-called “borderline customers.” However, the Company has not been able to reach an agreement with MECO regarding compensation for borderline sales dating back to 2006.

3. By Order 25,416, the Commission has required the Company to provide an update every six months on the status of borderline sales issues. Order 25,416 at 12. The status of the negotiations over payment for borderline sales by MECO has been the subject of regular inquiry at default service hearings since Order 25,416 was issued. *See* Transcripts from March 19, 2013 at pages 26-27; June 24, 2013 at page 17; September 18, 2013, pages 27-28, 34. For example, at the September 18, 2013 hearing, the Commission inquired about the time frame for conclusion of those negotiations: “...are we talking weeks, months, years? What do you think for a resolution of this at this point?” September 18, 2013 Transcript at page 34. The Company responded “Not weeks, but not years.” *Id.*

4. Given that three months has passed since that hearing and there is no resolution to the dispute, the Company included a brief update in Mr. Warshaw’s December 16, 2013 at page 17. Out of an abundance of caution, the Company is seeking protective treatment for the high level description of the status of those negotiations contained in Mr. Warshaw’s Testimony at page 17, lines 9 – 22 on the basis that it contains confidential commercial information.

5. RSA 91-A:5,IV exempts from public disclosure records that constitute confidential, commercial, or financial information. Based on *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), the Commission applies a three-step analysis to determine whether information should be protected from public disclosure. *See, e.g. Public Service Company of New Hampshire*, Order No. 25,313 at 11-12 (December 30, 2011). The first step is to determine if 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 if there is a public interest in disclosure. The Commission has held that 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 Service Company of New Hampshire*, Order 25,167 at 3 (November 9, 2010). If both of these steps are met, the Commission balances those interests in order to weigh the importance of keeping the record public with the harm from disclosure of the material for which protection is requested. *Id.* at 3-4.

6. Applying this three part test, the first inquiry is whether there is a privacy interest in the status update on the borderline sales settlement negotiations. The Company asserts that both parties have a privacy interest in the status of settlement negotiations, given that settlement negotiations are typically conducted in confidence. *See e.g.*, Puc 203.20(a). Given that the Commission has granted confidential treatment to settlement agreements among utilities and third parties in the past, *see, e.g., EnergyNorth Natural Gas, Inc.*, DG 03-160, Order No. 24,215 at 12-13 (Oct. 2, 2003); *EnergyNorth Natural Gas, Inc.*, 99-732, Order No. 23,316 at 5-6 (Oct. 11, 1999); *see also* Order 25,370 at pages 45-46 (granting protective treatment to settlements between utilities and third parties), it would be logical for the Commission to recognize a privacy interest in the discussions that lead to such settlements. Further, the Company has not publicly disclosed the status of these negotiations, and on information and belief, MECO has not either.

7. The next step in the analysis is to consider whether there is a public interest in disclosure of the information, including whether release of the information lends any insight into the workings of government. In this case, release of the positions of the parties to the negotiations does not provide any insight to the public on the workings of the Commission given that the negotiations are between two non-governmental entities. The public's interest is in the

final outcome of those negotiations, but not the details of the parties' current positions. Even if there were an articulable public interest in disclosure of this information, the harm to the settlement process would outweigh any gain from release of the information.

8. For these reasons, the Company requests that the Commission issue a protective order for the information as described above.

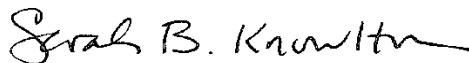
WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment Regarding Page 17, lines 9 – 22 of Mr. Warshaw's testimony, and;
- B. Such other relief as is just and equitable.

Respectfully submitted,

GRANITE STATE ELECTRIC COMPANY
D/B/A LIBERTY UTILITIES

By its Attorney,

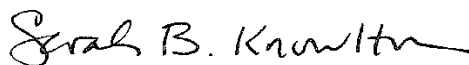


Date: December 18, 2013

By: _____
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Certificate of Service

I hereby certify that on December 18, 2013, a copy of this Motion has been forwarded to the service list in this docket.



Sarah B. Knowlton