

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

DOCKET NO. DE 13-063

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
REGARDING DATA REQUESTS STAFF 3-54 AND OCA 2-14
AND AUDIT REQUEST 106**

Granite State Electric Company d/b/a Liberty Utilities (“Granite State” or the “Company”), in accordance with Puc 203.08, hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant protective treatment to certain confidential information provided in response to discovery and audit requests regarding the Company’s permanent rate filing. In support of this motion, the Company states as follows:

Staff 3-54

1. On June 21, 2013, the Staff submitted Data Request 3-54 in which it requested the following:

Reference Saad/Demmer Testimony, pages 19 and 20 of 20. For each of the mentioned contracts, please provide details concerning the number of crews available through those contracts, necessary lead times to have the crews on site, and other significant contract terms regarding the availability of the crews. Is there any right of first refusal? Can the crews decline work? Please also define what qualifies as “emergency work.”

The Company responded by providing a table with information on the available contract crews, including their name, address, number of crews available, approximate response time and whether the Company has a contract with each of the companies. A copy of the Company’s confidential response is attached to this Motion as Exhibit A. The Company seeks protective

treatment of the names and addresses of each available contract crew because release of the information would likely impair the Company's ability to retain these crews in the future.

2. 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.

3. Applying this three part test, the first inquiry is whether the Company has a privacy interest in the names and addresses of the contractors that are available to it during storms. As the Commission is aware, there can be fierce competition among utilities for contractor crews during storm events. Given that Granite State is the smallest of the electric utilities in the State, it does not have the same leverage as larger utilities when hiring crews for storm restoration. The Company needs to be able to call upon the contractors with whom it has developed relationships during storm events. If the contractors' identities are made public (whether through release of their names or addresses), they may be solicited by other utilities for

storm work, and could potentially become unavailable when called upon by the Company. The Company asserts that it has a privacy interest in this information because release of this commercial information would cause the Company harm in its ability to procure storm restoration crews.

4. 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 as it relates to this case. Here, public disclosure of this information would not materially advance the public's understanding of the Commission's analysis in this proceeding. The redacted version of the response lists the number of crews available to the Company, which is more relevant to the public's interest in whether the Company has sufficient resources to respond to storms than the names and addresses of the companies that employ those crews. Moreover, public disclosure of the contractors' identities could cause real harm to the public interest, since their disclosure could impair the Company's ability to secure crews during outages. If that were the case, the Company could be left without sufficient resources. For these reasons, the Company requests that the Commission protect the contractors' identities from disclosure.

OCA 2-14

5. The Company also seeks to protect from disclosure portions of the Company's contract with Telvent, which was produced in response to OCA 2-14.¹ By way of background, the Telvent contract sets forth the terms and conditions upon which the Company will procure the design and implementation of a computerized Geographic Information System and electric

¹ OCA 2-14 requested the following: "Reference Testimony of Saad & Demmer page 19 of 20 line 18. Please provide a copy of the contract Liberty has in place with Telvent or provide the status of contract negotiations."

SCADA system. The Company is requesting protective treatment of the contract pricing only, which is attached hereto as Exhibit B.²

6. Applying the *Lambert* analysis, the Commission must determine whether the pricing information is commercial or financial information in which the Company and/or Telvent have a privacy interest. Telvent, which exists in a competitive marketplace, has a privacy interest in the prices for its good and services. If its pricing were made public, Telvent could suffer harm at the hands of its competitors who could underbid its prices. In light of this privacy interest, the next question is whether there is a public interest in disclosure of the contract pricing, including whether release of the pricing lends insight into the workings of the Commission or the Office of Consumer Advocate as it relates to this case. There were no issues in the case regarding the contract; rather, the Office of Consumer Advocate sought to establish through its discovery whether the contract existed or was still subject to negotiation. As a result, release of the contract pricing will not inform the public of the Office of Consumer Advocate's or the Commission's analysis of issues in the case. Even assuming there is a public interest in the pricing terms, the public's interest in disclosure is outweighed by the privacy interests in the contract. If the pricing terms were released and available to the competitive marketplace, vendors would have a disincentive to do business with regulated utilities, which could hamper the Company's ability to obtain competitive pricing in the future. *See e.g., Granite State Electric Company*, Order 25,304 (December 20, 2011) at 6. That would not be in the public interest.

² The Company produced two attachments – OCA 2-14.1 and OCA 2-14.2. The Company has determined that only OCA 2-14.2 has confidential information, and that Attachment OCA 2-14.1 is not confidential.

Audit Request 106

7. As part of the Commission's audit of the Company's permanent rate filing, the Company received Audit Request 106, which sought, in part, "[t]he tax sharing agreement Granite State had with National Grid (that Susan mentioned during the call). Also, if it changed during 2010, 2011 and 2012 provide any changes." In response, the Company produced the National Grid General Partnership and Affiliated U.S. Corporations Form of Second Amended and Restated Federal and State Income Tax Allocation Agreement dated February 1, 2002, which was marked confidential, and is attached to this response as Exhibit C. The Company requests that the entire contract be accorded protective treatment.

8. The contract in question is an internal contract among National Grid entities relating to allocation of taxes among National Grid entities and thus is commercial and/or financial information pursuant to RSA 91-A:5,IV. On information and belief, National Grid has not disclosed this agreement to the public previously. National Grid produced the contract to the Company upon its request and based on its expectation that it would be disclosed only to the audit staff for purposes of the Company's rate case. As a result, National Grid has an expectation of privacy regarding this agreement.

9. Applying the *Lambert* three-step analysis, the Commission must consider whether there is a public interest in disclosure of the National Grid contract. Disclosure that informs the public of the conduct and activities of its government is in the public interest; otherwise, public disclosure is not warranted. *See id.* In this case, release of the National Grid contract would not materially advance the public's understanding of the Commission's analysis in this case. Rather, if the public seeks information about the Staff's analysis, that information is readily available through the Staff's testimony in this docket, including that of Steven E. Mullen, whose testimony

included the Staff's audit report. *See* Testimony of Steven E. Mullen and Attachment SEM-1.

In light of the above, there is no public interest in the disclosure of the National Grid agreement, and as a result, a protective order should issue to prevent its disclosure.

WHEREFORE, Granite State respectfully requests that the Commission:

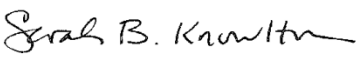
- A. Grant this Motion for Protective Order and Confidential Treatment Regarding Staff 3-54, OCA 2-14 and Audit Request 106; and
- B. Such other relief as is just and equitable.

Respectfully submitted,

GRANITE STATE ELECTRIC COMPANY D/B/A
LIBERTY UTILITIES

By its Attorney,

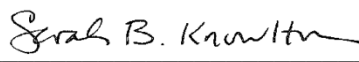
Date: January 21, 2014

By: 

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Certificate of Service

I hereby certify that on January 21, 2014, a copy of this Motion has been forwarded to the service list in this docket.



Sarah B. Knowlton