

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 23-039

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

Request for Change in Distribution Rates

Order on Motions for Protective Order and Confidential Treatment

ORDER NO. 26,871

August 10, 2023

In this order the Commission grants, pursuant to N.H. RSA 91-A:5 and N.H. Admin. Rule Puc 203.08, two motions for protective orders and confidential treatment of certain information filed by Liberty Utilities (Granite State Electric) Corp. d/b/a/ Liberty (Liberty).

I. PROCEDURAL HISTORY

On May 5, 2023, Liberty filed a full distribution rate case. With its full rate case, Liberty filed a motion for protective order and confidential treatment regarding salary and compensation information. On June 14, 2023, Liberty filed live spreadsheets for schedules and models in its rate case filing. With its spreadsheets, Liberty filed a motion for protective order and confidential treatment regarding proprietary information and cybersecurity information.

Following the commencement of an adjudicative proceeding the Commission afforded all parties the opportunity to take a position on these motions at a prehearing conference or in writing afterward. No objections or other responses have been filed.

The motions and other docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to

the Commission's website at:

<https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-039.html>.

II. LIBERTY'S REQUESTS FOR PROTECTIVE ORDERS

Liberty requested protective orders applicable to three different categories of information. In support of these requests, Liberty identified a legal basis for confidential treatment of each category of information and identified what harm would result if the information were to be publicly disclosed.

The first category of information is salary and compensation information for individual officers and directors of Liberty required by Puc 1604.01(a)(14). Liberty argued that protective treatment is appropriate under RSA 91-A:5, IV, because individuals have a privacy interest in their compensation and there is no corresponding public interest that tips the balance in favor of disclosure. According to Liberty, the identified individualized salary information is information that Company holds in confidence and has not previously made public; however aggregated salary information and any compensation information that is disclosed elsewhere is provided publicly, consistent with past practice. Liberty cited Order No. 26,271 (July 10, 2019), in which Commission found the same type of information to be confidential on the condition that information disclosed to other regulatory bodies be publicly disclosed and that aggregated compensation information be publicly disclosed.

The second category of information consists proprietary information belonging to a third party. Liberty argued that protective treatment is appropriate under RSA 91-A:5, IV, because the information is "confidential" and "commercial" information for which there is no corresponding public interest that tips the balance in favor of disclosure. According to Liberty, the information is a compilation of data provided to

a third-party consultant through a paid subscription service; a condition of that subscription service is that the information must remain confidential to preserve the value of the work product. Liberty cited Order No. 26,040 (July 11, 2017), in which Commission granted confidential treatment of information that represents non-public, commercially sensitive financial and operational information of companies engaged in a competitive industry.

The third category consists of Liberty's budget for cybersecurity spending. Liberty argued that protective treatment is appropriate under RSA 91-A:5, XI, because the information details how much will be spent on cybersecurity initiatives for Liberty and its affiliates, when cybersecurity investments will be made, and an itemization of the types of cybersecurity products or services that will be purchased. Liberty cited Order No. 26,366 (June 17, 2020), in which Commission granted confidential treatment of treatment of a cyber security report.

III. COMMISSION ANALYSIS

RSA Chapter 91-A ensures public access to information relative to the conduct and activities of governmental 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.

RSA 91-A:5, IV exempts several categories of information, including records pertaining to confidential, commercial, or financial information. The party seeking protection of the information in question has the burden of showing that a privacy interest exists, and that its interest in confidentiality outweighs the public's interest in disclosure. *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 355 (2020) (citing *Prof'l Firefighters of N.H. v. Local Gov't Ctr.*, 159 N.H. 699, 707 (2010), and *N.H. Housing Fin. Auth.*, 142 NH 540 at 552, 555-59 (1997)). The New Hampshire Supreme

Court and the Commission each apply a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Lambert v. Belknap County Convention*, 157 NH 375, 382–83 (2008). The Commission’s rule on requests for confidential treatment reflects the three-step balancing test required by New Hampshire case law. See N.H. Code Admin. Rules Puc 203.08; *see also, e.g., Unitol Energy Systems, Inc.*, Order No. 25,214 (April 26, 2011) at 35. The rule requires the movant to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08(b). The Commission then balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.*

RSA 91-A:5, XI, exempts records related to information technology systems, such as cybersecurity plans, vulnerability testing and assessments materials, detailed network diagrams, if disclosure would “...make public security details that would aid an attempted security breach or circumvention of law....”

The Commission has reviewed the information that Liberty sought protective orders for and agree that Liberty requested confidential treatment of either confidential, commercial or financial information under RSA 91-A:5, IV or information technology information under RSA 91-A:5, XI. Liberty has identified potential harms that would be caused to its employees, consultants, or in the case of cybersecurity

information, the public at large. Liberty has also identified that confidential treatment is consistent with past commission practices. No parties filed any objection or argued that the public interest outweighs disclosure. Weighing potential harm to Liberty or to third parties against the benefits of disclosure of the information to the public, we find that, on balance, protective treatment is warranted.

Accordingly, pursuant to Puc 203.08(a), we grant Liberty's motions for protective order and confidential treatment. Consistent with past practice and Puc 203.08(k), the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party or member of the public, to reconsider this protective order under RSA 91-A, should circumstances so warrant.

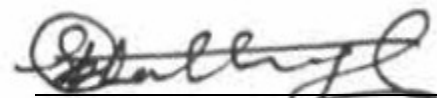
Based upon the foregoing, it is hereby

ORDERED, that Liberty's Motions for Protective Order and Confidential Treatment dated May 5, 2023 and June 14, 2023 are GRANTED as discussed herein.

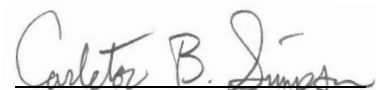
By order of the Public Utilities Commission of New Hampshire this tenth day of August, 2023.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-039

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