

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 19-064

LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP.

Petition for Permanent and Temporary Rates

Order on Motion for Confidential Treatment and Waiver

ORDER NO. 26,271

July 10, 2019

APPEARANCES: Michael J. Sheehan, Esq., on behalf of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities; the Office of the Consumer Advocate, by D. Maurice Kreis Esq., on behalf of residential ratepayers; Clifton Below on behalf of the City of Lebanon; Primmer Piper Eggleston & Cramer PC, by Elijah D. Emerson, Esq., on behalf of Clean Energy of New Hampshire; and Paul B. Dexter, Esq., on behalf of Commission Staff.

This order requires Liberty to publicly file individual compensation information for certain directors while permitting Liberty to file other officer/director compensation in aggregate form. The order also requires Liberty to file compensation information for certain directors, to disaggregate compensation methods as required by the Commission's rules, and to provide additional information regarding "indirect" compensation. In addition, the order waives a filing rule and allows Liberty to file unredacted, confidential copies of its Compensation Schedule using an alternative method.

I. PROCEDURAL HISTORY

On April 30, 2019, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (Liberty or the Company) filed a Petition for Permanent and Temporary Rates pursuant to RSA 378:27 and RSA 378:28. Liberty also filed a Partially Assented-to Motion for Protective Order and Confidential Treatment Regarding Compensation Information and Waiver of [N.H. Code Admin. Rules] Puc 203.02 and Puc 203.08 (Motion for Confidential Treatment and

Waiver). In its motion, as relevant here, Liberty sought confidential treatment for compensation paid to the Company's directors, current and former president, and current and former secretary/treasurer. That information was included on a Compensation Schedule within the filings required in a rate case. *See* Liberty's Full Rate Case Filing Requirements at I-144. Last, Liberty sought a waiver of rules governing confidential filings to allow it to file the Compensation Schedule separately from the remainder of its filing. Staff objected to those parts of Liberty's motion. The Commission heard argument on Liberty's Motion for Confidential Treatment and Waiver at the Prehearing Conference on May 30, 2019.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://puc.nh.gov/Regulatory/Docketbk/2019/19-064.html>.

II. POSITIONS OF THE PARTIES AND STAFF

A. Liberty

Liberty requested protection of individual compensation information that will not be disclosed in other regulatory filings, which Liberty argued is consistent with Commission precedent. Liberty argued that there is a clear privacy interest in the compensation information and stated that the Company maintains the information in strict confidence. Further, Liberty claimed that disclosure could disrupt employee relations and affect its ability to recruit and retain employees, causing competitive harm. Liberty conceded that there is a public interest in releasing generic or aggregated compensation information, as it would provide some insight into the Commission's rate setting activities, but the Company concluded that this interest does not outweigh the privacy interest attached to the compensation information.

At the May 30 Prehearing Conference, Liberty agreed to provide compensation information for Directors - Class II. Prehearing Conference Hearing Transcript of May 30, 2019 (Tr.), at 12. Further, Liberty agreed to provide aggregate compensation information for officers and directors whose information will not be disclosed in other public filings. *Id.* at 18.

Liberty also requested a waiver of N.H. Code of Admin. Rules Puc 203.02 and Puc 203.08 so that Liberty could file the Compensation Schedule in an envelope accompanying the rate case filing, rather than being inserted into the body of the filing. Liberty claimed that this method would reduce the chance of inadvertent disclosure.

B. Office of the Consumer Advocate

The OCA objected to Liberty's Motion for Confidentiality and Waiver, stating that public interest in disclosure outweighs any privacy interest in compensation amounts. Tr. at 6.

C. Staff

Staff stated that the Compensation Schedule was incomplete because it contained information for Directors and Directors - Class I, but did not include information for Directors - Class II. Staff argued that Liberty's explanation that Directors - Class II are "not paid via payroll" is insufficient to invalidate the requirement that Liberty provide director compensation in a full rate case.

Staff also objected to Liberty's Motion for Confidential Treatment and Waiver regarding compensation of officers and directors, noting that Liberty's ratepayers are asked to pay this compensation through rates and therefore should have the information to assess whether the compensation and accompanying rate impact are just and reasonable. Furthermore, because the compensation of Liberty's local New Hampshire officers (President and Secretary/Treasurer) was not disclosed in Liberty's 2018 FERC Form 1 (and will not be disclosed in other regulatory

filings), Liberty's customers will have no way to evaluate the reasonableness of that compensation if the Commission grants Liberty's motion. Thus, Staff concluded that the public interest in disclosing this compensation information outweighs any privacy interest.

Finally, Staff did not oppose Liberty's request to waive Puc 203.02 and Puc 203.08. Staff stated that both Liberty's envelope approach or following the rule and including the confidential page in the filing would produce essentially the same result. Staff requested, however, that any Commission waiver granted be limited to this case. Tr. at 9-11.

III. COMMISSION ANALYSIS

Puc 1604.01(a)(14) requires utilities seeking a rate increase to provide a list of officers and directors of the utility and their full compensation for each of the last two years, detailing base compensation, bonuses, and incentive plans. There are no exceptions stated. The Compensation Schedule that Liberty filed in response to Puc 1604.01(a)(14) does not provide information for its Directors - Class II. Liberty is hereby required to provide that information.

We note that the Compensation Schedule provides "base salary" and "incentive award" for all the officers and directors (except Directors - Class II as noted above) and sums those figures to what it describes as "Total Direct Compensation." The rule requires the information be disaggregated into at least three parts: base compensation, bonuses, and incentive plans. Liberty is hereby required to provide the required three-part disaggregation and to define specifically what is included in "Total Direct Compensation." Liberty shall also detail what, if any, other compensation was excluded from the Compensation Schedule and justify why any such "indirect" compensation should be excluded.

With respect to confidentiality, Liberty cites two orders where this matter received significant attention: Order No. 25,037, *Public Service Company of New Hampshire*

(October 30, 2009), and Order No. 25,119, *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH* (June 25, 2010). Those decisions review the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008), in determining whether officer and director compensation should be protected from public disclosure. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. 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. Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure.

In Order No. 25,037 and Order No. 25,119, the Commission struck a balance between the individuals' privacy interests and the public's interest in disclosure by providing no protection for compensation amounts that will be disclosed in other regulatory filings, and by requiring that other officer and director compensation be disclosed to the public in aggregate form.

At the May 30 Prehearing Conference, Staff submitted a report titled "Annual Compensation of Officers and Directors of Public Service of New Hampshire" dated April 29, 2009 (PSNH Report), filed in Docket No. DE 09-035, the docket in which Order No. 25,037 was issued. The PSNH Report provides individual compensation information for officers whose compensation is disclosed in other filings and aggregate information for other officers. In addition, the PSNH Report includes the amount and percentage of the reported compensation charged to PSNH, which is useful in evaluating whether the reported compensation figures are just and reasonable.

As the Commission found in Orders No. 25,037 and 25,119, we find an appropriate balance can be struck between individual privacy concerns and the public's right to know, by providing undisclosed information about officer compensation in the aggregate. We grant Liberty's Motion for Confidential Treatment and Waiver as it pertains to protecting from public disclosure the information filed on the Compensation Schedule as originally filed and as updated in accordance with this order.

We will require the Company to submit an updated Compensation Schedule that includes information for Directors - Class II. In addition, we will require Liberty to submit a public report similar to the PSNH Report.¹ Liberty's public report shall include: (1) the individual compensation information for Ian Robertson, whose 2017 information has already been disclosed in this docket, updated for 2018 information when that becomes public; (2) aggregate information for each class of Director (*i.e.* Directors, Directors - Class I, and Directors - Class II) with an indication which, if any, of the category of director contains Ian Robertson's compensation in the aggregate information; and (3) aggregate information for the other two officers (President and Secretary/Treasurer). For all this information, Liberty shall disaggregate the compensation information by three types, per Puc 1604.01(a)(14), as discussed above, and provide the amount and percentage charged to Liberty Utilities (Granite State Electric) Corp.

We will also grant Liberty's request to waive Puc 203.02 and Puc 203.08 and will accept Liberty's filing of the Compensation Schedule in an envelope separate from the remainder of its filing. We waive provisions of our rules when the waiver serves the public interest and will not disrupt the orderly and efficient resolution of matters before the commission. Puc 201.05(a).

¹ The PSNH Report does not include external board members whose compensation is not included in rates. At this time, we require Liberty to include external director compensation (which Liberty agreed to provide) on its schedule.

When determining the public interest, we consider whether compliance with the rule would be onerous or inapplicable given the circumstances of the affected person or the purpose of the rule would be satisfied by an alternative method proposed. Puc 201.05(b). Here, at least one purpose of the rules is met by filing the Compensation Schedule in a separate envelope; that is, identifying the material as potentially confidential. The rules for marking confidential material have another purpose, which is to provide Commissioners and Staff with appropriately collated materials for their review. Filing confidential pages in a separate envelope does not satisfy that purpose. Because there was only one page containing confidential information that would have been collated in a very large document, filing the single page separately made sense and we will therefore grant the waiver in this instance.

Based upon the foregoing, it is hereby

ORDERED, that Liberty's Motion for Protective Order and Confidential Treatment Regarding Compensation Information and Waiver of N. H. Code Admin. Rules Puc 203.02 and Puc 203.08 is granted; and it is

FURTHER ORDERED, that Liberty shall file a revised, non-public Liberty Compensation Schedule and additional public compensation information, as discussed herein, within 15 days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this tenth day of July,
2019.



Martin F. Honigberg
Chairman

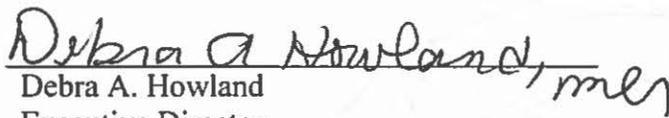


Kathryn M. Bailey
Commissioner

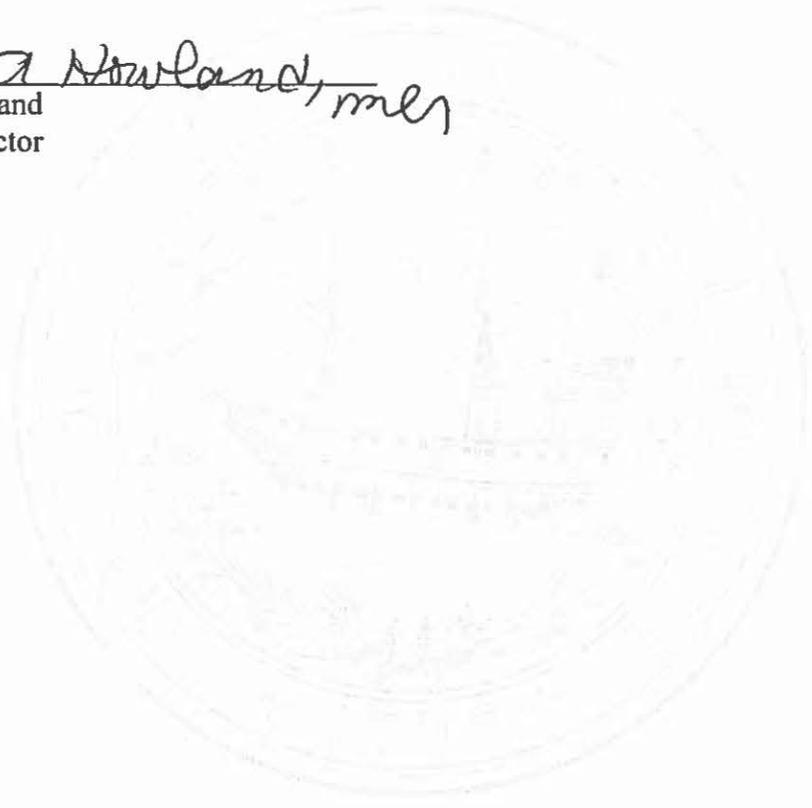


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