

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 STAFF DATA REQUESTS 1-29, 1-30, 1-31, 1-32, 1-33, 1-34**

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 confidential treatment to certain competitive bid and employee compensation information provided in response to discovery requests from Staff regarding the Company’s temporary rate filing. In support of this motion, the Company states as follows:

1. On May 3, the Staff submitted Data Request 1-29 to the Company requesting “...a list of the competitive bids for outside consultant services and their estimated costs of the rate case.” On May 10, the Company produced a confidential response to Staff 1-29 identifying the names of all of the consulting firms that responded to the Company’s Request for Proposals as well as the bid range provided by each consultant. The redacted version of the response removed the bid ranges provided by each consultant.¹ By this motion, the Company seeks protective treatment of the bid range provided by each bidder. A copy of the response containing the confidential information is attached to this Motion.

¹ The initial response to Staff 1-29 also redacted the names of the unsuccessful bidders. The Company subsequently revised the response on May 30 to release the names of all the bidders based on a representation in the Request for Proposals that “Proposals filed in response to this RFP will be considered a public document and will be available for public inspection upon filing. Liberty Utilities will seek protective treatment of bidders [sic] proposal amounts with the PUC.”

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 bidders have a privacy interest in the amount of the bids that would be invaded by disclosure of the information. In this case, the Company represented to the bidders prior to the submission of bids that it would seek protective treatment of the bid amounts. Thus, all bidders had an expectation before bidding that the price of their proposals would be confidential. The Commission has recognized the privacy interest of bidders in the amount of their bids, albeit in the context of default service bids. See *Granite State Electric Company*, Order 25,338 at 8-9. Based on this holding, it is reasonable to conclude that the bidders in this case have a privacy interest in their bid amounts.

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. Here, the total amount of rate case expense recoverable from customers has been capped at \$300,000. *See* Settlement Agreement in DG 11-040 at Bates page 23, approved by Order 25,370. Given that customers already know the total amount of expense that is subject to recovery for outside consultants, revealing the amount of each bid proposal will not provide any significant information about how the Commission works in analyzing proposed rate increases. Thus, release of the information does not further the public interest. However, even if there were an articulable public interest in disclosure of the bid amounts, the harm to the bid process well outweighs anything that would be gained from the release of the price information. Public disclosure of bid amounts could chill the bidding process, creating a disincentive for vendors to participate in future solicitations knowing that their competitors would have access to any price proposal submitted. The Commission has protected against this very harm in the context of the default service bidding process. *See Granite State Electric Company*, Order 25,338 at 9 (“the interest in confidentiality outweighs that of disclosure inasmuch as disclosing the information would likely hamper the Company’s ability to engage suppliers in competitive bidding in the future, which would, in turn, make it more difficult to obtain its supply at competitive prices and might thereby increase rates to customers. Thus, there is a very strong privacy interest in avoiding disclosure, which we find is not outweighed by the public’s interest in disclosure.”) That same reasoning should apply here to protect the bid prices submitted in response to Staff 1-29.

5. On May 3, the Company also received Staff Data Requests 1-30, 1-31, 1-32, 1-33 and 1-34 as set forth below:

Staff 1-30: Staff 1-30: Reference Attachment MES-2. Granite State’s hiring schedule reflects the hiring of 16 new employees by March 1, 2013, which includes five Gas and Electric Dispatchers. Does the Company’s request for temporary rates include any of these 16 new positions? How have these positions been taken into account for purposes

of the permanent rate filing? Please supply a schedule detailing the date of hire, costs of each hire (full cost including benefits), and the allocation of each positions' costs between the electric and gas companies. This is a continuing request until all 16 positions have been filled.

Staff 1-31: Reference Staff 1-30 and Attachment MES-2. The Company's request for permanent rates includes these 16 new positions plus an additional 29 new positions to be hired by July 1, 2013. Please supply a schedule detailing the date of hire, costs of each hire (full cost including benefits), and the allocation of each of all 45 new positions' costs between the electric and gas companies. This is a continuing request until all 45 new positions are filled.

Staff 1-32: Reference the Direct Testimony of Mark E. Smith at page 2, line 19. How many of Granite State's 202 employees' costs as of December 31, 2012 should be allocated between the electric and gas companies? Please supply a schedule detailing the cost of each employee (full cost including benefits) and the allocation of each position's costs between the electric and gas companies.

Staff 1-33: Reference Direct Testimony of Mark E. Smith at page 5, lines 1-3. Please describe how the Company's requests for a) temporary rates and b) permanent rates take into account the 3% merit increase to non-union base wages effective January 1, 2013. Please supply a schedule detailing the costs to each employee and the allocation of each position's costs between the electric and gas companies.

Staff 1-34: Reference Direct Testimony of Mark E. Smith at page 6, lines 11-13. Please describe how the Company's requests for a) temporary rates and b) permanent rates take into account the 2.5% contract increase to union wages effective May 12, 2013. Please supply a schedule detailing the costs to each position and the allocation of each position's costs between the electric and gas companies.

6. Each of these requests sought detailed information on the hiring of employees for certain positions at the Company, including the title of the position, the date of hire, and the salary and benefits associated with each position. In response, the Company produced two schedules that contain confidential information – one in response to Staff 1-30 and 1-31 and another in response to Staff 1-32, 1-33, and 1-34. The Company seeks protective treatment of the gray-shaded information on each schedule which is attached to this Motion, which reflects job title, total compensation, total compensation allocated to Granite State, total benefits and total benefits allocated to Granite State, total annual payroll and total annual payroll allocated to Granite State.

7. In this case, there is a clear privacy interest in the compensation information produced in response to the Staff's data requests, thereby meeting the first part of the three-step analysis. Employee compensation information is not publicly available, and the Company takes steps to maintain it in strict confidence through physically securing the information in locked files and disclosing it within the Company only on a need to know basis. The Commission has previously found that employees of utilities have a privacy interest in their compensation information. See *EnergyNorth Natural Gas, Inc.*, DG 10-017, Order No. 25,119 at 8 (June 25, 2010). There is no compelling reason for the Commission to deviate from its practice with respect to the employees in this case.

8. Under the three-step analysis, the Commission must then consider whether there is a public interest in its 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 No. 25,617 at 3 (November 9, 2010). While one might argue that release of the information would provide some insight into the Commission's rate setting activities in this case, there is no requirement or need to provide to the public compensation information on each individual position to gain insight into how the Commission sets rates. The Company has provided the amount by which the revenue requirement in the case has been reduced as a result of the hiring of these employees in comparison to the National Grid transition service costs that would have otherwise been incurred by the Company to perform the same services. In this case, the public's interest is in the aggregate of that amount, to ensure that the Company is providing services to its customers based on reasonable costs. That should provide the public with ample opportunity to understand how the Commission uses that information for rate setting purposes. At the same time, the

Commission can respect the privacy interests of the limited number of individuals whose compensation is not public by issuing the requested protective order.

9. Even if the Commission were to find that release of the information would provide some insight into the workings of the Commission, any benefit of doing so is well outweighed by the privacy interest of the employees as well as the Company. Release of this information would be disruptive to relations among employees who do not otherwise have access to their co-employees' salaries. Its disclosure could also disrupt relations between the Company and its employees. Further, in the case of the positions that will be filled in 2013, disclosure of the Company's planned compensation for each position could impair the Company's ability to recruit or negotiate employment with those individuals who will fill these positions. Thus, disclosure of this information would not only invade the privacy interest of the individuals involved but could do damage to the Company's ability to recruit and retain employees, as well as maintain positive relations in the workplace.

10. For these reasons, the Company requests that the Commission issue a protective order for the payroll and benefit costs associated with the positions identified on Attachments Staff 1-30 and 1-31, and Staff 1-32, 1-33 and 1-34.

WHEREFORE, Granite State respectfully requests that the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment Regarding Staff 1-29, 1-30, 1-31, 1-32, 1-33 and 1-34; and
- B. Such other relief as is just and equitable.

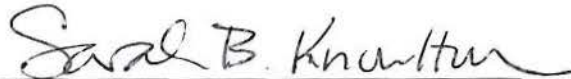
Respectfully submitted,

GRANITE STATE ELECTRIC COMPANY D/B/A
LIBERTY UTILITIES

By its Attorney,

Date: May 31, 2013

By:



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Certificate of Service

I hereby certify that on May 31, 2013, a copy of this Motion has been forwarded to the service list in this docket.



Sarah B. Knowlton