

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DE 19-064

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

Distribution Service Rate Case

**Partially Assented-to Motion for Protective Order and Confidential Treatment
Regarding Compensation Information, and for Waiver of Puc 203.02 and Puc 203.08**

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (“Granite State” or the “Company”), through counsel, respectfully moves the New Hampshire Public Utilities Commission, first, pursuant to Puc 203.08 to grant confidential treatment to certain compensation information required by Puc 1604.01 that is included with the Company’s rate case filing made this date (to which Staff and the OCA may object), and second, pursuant to Puc 201.05 to waive the requirements of Puc 203.02 and Puc 203.08 related to how the copies of the compensation information should be filed (to which Staff and the OCA assent).

In support of this motion, the Company states as follows:

1. Puc 1604 requires a petitioning utility to file a number of documents with its rate case, including “[a] list of officers and directors of the utility and their full compensation for each of the last 2 years.” Puc 1604.01(a)(14).
2. The Company included in its Puc 1604 filing a redacted version of the single-page document that contains the salary and compensation information for officers and directors of Granite State as required by Puc 1604.01(a)(14) (the “Compensation Information”).

Motion for Confidential Treatment.

3. In this motion, Granite State seeks confidential treatment of the Compensation Information regarding the Company's directors, the current and former President, and the current and former Secretary/Treasurer because the Company holds that information in confidence and has not previously made the information available to the public.¹

4. Protective treatment of the Compensation Information is appropriate because the individuals have a privacy interest in their compensation and there is no corresponding public interest that tips the balance in favor of disclosure.

5. RSA 91-A:5, IV, exempts the following from public disclosure: "Records pertaining to internal personnel practices; confidential, commercial, or financial information," and "personnel ... files whose disclosure would constitute invasion of privacy."

6. The Commission applies the three-step test from *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), to determine whether information should be protected from public disclosure. *See, e.g. Public Serv. Co. of N.H.*, Order No. 25,313 at 11-12 (Dec. 30, 2011). The first step is to determine whether 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 whether there is a public interest in disclosure. 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 Serv. Co. of N.H.*, Order 25,167 at 3 (Nov. 9, 2010). If these first two these steps are met, the Commission weighs the interests of keeping the record public against the harm from disclosure. *Id.* at 3-4.

¹ Director Robertson is also CEO of Algonquin Power and Utilities Corp. ("APUC"), Granite State's publicly traded parent. When APUC discloses Mr. Robertson's compensation through its required public filings, Granite State will provide that information here.

7. There is a clear privacy interest in the Compensation Information. Neither Granite State nor APUC has disclosed the Compensation Information, and they each take steps to maintain the information in strict confidence by securing it and disclosing it within the affiliated companies only on a need-to-know basis. In addition to exposing the personal, non-public information of a few key employees, and thereby invading their privacy, release of the Compensation Information could disrupt relations among employees and relations between the companies and their employees, which could affect the ability to recruit and retain employees, causing competitive harm. Thus, disclosure of the Compensation Information would not only invade the individual's privacy interests, but could also harm the companies themselves.

8. Given the significant privacy interest in the Compensation Information, the Commission must then consider whether there is a public interest in its disclosure, which presents the question of whether disclosure informs the public of the conduct and activities of its government. *Public Serv. Co. of N.H.*, Order No. 25,617 at 3.

9. Although there is a public interest in the release of generic or aggregated compensation information as it would provide some insight into the Commission's rate setting activities in this case, that interest does not outweigh the privacy interests of those private individuals. The public information that the Company has provided in support of its rate request is sufficient to inform the public of how the Commission sets rates.

10. For these reasons the Company submits that the balance tips decidedly in favor of privacy, and thus asks the Commission to issue a protective order for the Compensation Information, marked as confidential in the document filed as required by Puc 1604.01(a)(14).

11. Two Commission orders from 2009 and 2010 are directly on point and conclude that senior management employees have a privacy interest in their "individually identifiable

compensation information,” except for those whose compensation is make public by federal securities laws, which privacy interests outweigh the public’s interest in disclosure.

12. *Granite State Natural Gas, Inc.*, Order No. 25,119 (June 25, 2010), and *Public Serv. Co. of N.H.*, Order No. 25,037 (Oct. 30, 2009), both involved the same issue raised here - motions seeking confidential treatment of officer and director compensation information required in rate case filings by Puc 1604.01(a)(14). In both cases the Commission performed a thorough application of the three step *Lambert* analysis, and in both cases the Commission granted confidential treatment to individual salary information. *See* Order No. 25,119 at 11 (“Individually identifiable compensation information, other than that in the annual report, will be kept confidential, and will not be disclosed to the public”); Order No. 25,037 at 11 (“the specific amount of compensation paid to each of the non-minor officers shall be accorded confidential treatment and made available under protective order to all parties and Staff”).

13. Although granting confidential treatment of the individual compensation data, both orders did require the companies to publicly disclose (1) compensation data of those individuals for whom the publicly traded parents were required to disclose pursuant to federal securities laws, (2) aggregated compensation data of “non-minor” officers, and, where the compensation was allocated to different subsidiaries as is the case with Liberty, (3) to disclose what percentage of that aggregate compensation was allocated to the utility in question. Order No. 25,119 at 11; Order No. 25,037 at 10-11.

14. Finally, note that the Commission followed this practice when it granted identical motions in the recent rate case of Granite State’s natural gas affiliate, *see Liberty Utilities (EnergyNorth Natural Gas) Corp.* DG 17-048 (transcript of May 26, 2017, hearing, at 4-5), and in Granite State’s prior rate case, *see Liberty Utilities (Granite State Electric) Corp.*,

DE 16-383 (transcript of June 17, 2016, hearing, at 6). Note that both Staff and the OCA did *not* object to these requests in these two prior cases. The Commission granted both motions. There is no compelling reason for the Commission to deviate from that precedent here.

15. Staff and the OCA both reserved their right to object to this part of Granite State's motion seeking confidential treatment.

Motion to Waive Puc 203.02 and Puc 203.08.

16. Given that the Compensation Information is the only confidential page in a voluminous filing, the Company chose to include with this motion an envelope containing seven copies of that single confidential page, and to include the redacted version in all seven copies of the entire filing. This manner of filing the Confidential Information is simple, it reduces the chance of inadvertent disclosure because the confidential page can be more easily managed, and the Commission granted the same motion when EnergyNorth filed its last rate case in 2016. *See* Transcript of May 26, 2017, prehearing conference at 4-5.

17. One could interpret the rules governing filings generally, Puc 203.02(a), and governing the filing of confidential documents specifically, Puc 203.08(b)(1), to preclude the method that the Company proposes here and include the single confidential page within the large rate case filing, which gives rise to the disclosure risk above. To the extent the rules so require, the Company seeks a waiver of Puc 203.02(a) and Puc 203.08(b).

18. Puc 201.05 states that the Commission shall waive the provisions of any of its rules when the waiver serves the public interest and will not disrupt the orderly and efficient resolution of matters before the Commission. In determining whether a waiver will serve the public interest, the Commission examines whether compliance would be onerous or inapplicable given the circumstances, or the purpose of the rule would be satisfied by another method.

19. The Company's proposed method of filing the single confidential page serves the public interest in that it may better protect the document's confidentiality and may simplify the filing process. The proposed method does not disrupt the orderly and efficient resolution of matters before the Commission. And the purpose of the rule, which is to effectively provide the Commission with an appropriate number of copies of the confidential document in a manner that best allows Commission review, is met through the method that the Company employs here.

20. Staff and the OCA both assent to this waiver request.

WHEREFORE, Granite State respectfully requests that the Commission:

- A. Grant the Compensation Information protective treatment;
- B. To the extent the manner in which the Company filed the confidential document is not consistent with the above-quoted provisions of Puc 203.02 and Puc 203.08, waive those rules and accept the Company's filing; and
- C. Grant such other relief as is just and equitable.

Respectfully submitted,

LIBERTY UTILITIES (GRANITE STATE ELECTRIC)
CORP. D/B/A LIBERTY UTILITIES
By its Attorney,



Date: April 30, 2019

By: _____
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Certificate of Service

I hereby certify that on April 30, 2019, a copy of this Motion has been forwarded to the service list in this docket.

A handwritten signature in cursive script, appearing to read "M. Sheehan".

Michael J. Sheehan