

State of New Hampshire
Public Utilities Commission

DE 19-064

Liberty Utilities (Granite State Electric) Corp.
Petition for Permanent and Temporary Rates

Objection to Portions of Liberty Utilities' Motion for Protective Order and Confidential Treatment Regarding Compensation Information and Waiver of Puc 203.02 and Puc 203.08

On April 30, 2019, Liberty Utilities (Granite State Electric) Corp. d/b/a/ Liberty Utilities (Liberty or the Company) filed a Motion for Protective Order and Confidential Treatment Regarding Compensation Information and Waiver of Puc 203.02 and Puc 203.08 (Motion), as part of a general rate case. Staff of the Public Utilities Commission (Staff) hereby Objects to portions of this Motion and states as follows:

1. On April 30, 2019, Liberty filed a Petition for Permanent and Temporary Rates with the New Hampshire Public Utilities Commission (Commission). Liberty's filing included direct testimony and exhibits in support of the proposed rates and related supplemental information required by Puc Rule 1600 *et seq.*

2. Rule 1604, titled "Full Rate Case Filing Requirements" requires Liberty to file, as part of its full rate case "[a] list of officers and directors of the utility and their full compensation for each of the last 2 years, detailing base compensation, bonuses, and incentive plans." Puc Rule 1604.01(a)(14). In response to this requirement, Liberty filed the required information for its Officers (President, and Secretary/Treasurer), Directors, and Directors,

Class I, but not for its Directors, Class II. For its Directors, Class II, instead of providing the required information, Liberty notes that these amounts are “[n]ot paid via payroll.” See Liberty’s Full Rate Case Filing Requirements Pursuant to Puc 1604.01(a) (Filing Requirements), April 30, 2019, at I-144.

3. Staff objects to Liberty’s omission of compensation information for Directors, Class II. Staff is not aware of (and Liberty does not cite) any exception or carve-out to Puc Rule 1604.01(a)(14) that would allow a utility to withhold required compensation information because it is “not paid via payroll.” To the contrary, the rule requires reporting of “full compensation” and specifically cites not only base salary, but also bonuses and incentives, indicating that the Commission seeks a broad reading of the term “full compensation.” Staff requests that Liberty be required to report the required information for Directors, Class II.

4. In its Motion, Liberty seeks to protect from public disclosure, the compensation information for its President, Secretary/ Treasurer, Directors and Directors, Class I.¹ See Filing Requirements at I-144. In support, of its Motion, Liberty claims that there is a clear privacy interest in protecting the compensation information from public disclosure as evidenced by Liberty’s practice of keeping the information confidential and only disclosing it internally on a “need-to-know basis.” Motion at 3. Further, Liberty claims that disclosing the information could “disrupt relations among employees and relations

¹ As indicated, Liberty provided no compensation information for Directors, Class II, but Liberty’s redactions suggest that, had such information been provided, it would have sought to protect that information as well.

between the companies and their employees, which could affect the ability to recruit and retain employees, causing competitive harm.” *Id.* Liberty claims that this privacy interest is not outweighed by any public interest in disclosure. *Id.*

5. Staff does not agree that any privacy interest in officer and director compensation outweighs the public interest in disclosure. Staff understand (and intends to confirm as this rate case progresses) that Liberty’s rate request includes rate recovery of all of the 2018 (test year) compensation paid to its President, and Secretary/Treasurer, and a portion of the compensation paid to the Directors, plus projected increases for 2019. *See* Liberty Schedule RR-3-01 at II-108. As such, Staff maintains that Liberty’s customers, who are asked to pay for these compensation amounts in rates, are entitled to know how much these executives are paid and whether the amounts are just and reasonable. This outweighs any privacy interest.
6. Further, Liberty’s claim that protection from public disclosure is needed to retain officers is not supported by recent experience. In its 2016 rate case, (DE 16-383) where this information was protected from public disclosure, Liberty’s filing requirements at 0146 show that Liberty had two Presidents in 2014 (R. Lehr, followed by D. Saad) and that in 2015 D. Saad was succeeded by D. Swain. Liberty’s 2016 FERC Form 1 Report at 104 shows that in 2016, D. Swain was succeeded by J. Sweeney. The filing requirements in this case at I-114 show that J. Sweeney was succeeded by S. Fleck in 2017. S. Fleck remained president for all of 2018. In all, Liberty has had five presidents in the last five years. Similar analysis shows Liberty has had four Secretary/Treasurers over this same

five-year period. Clearly, non-disclosure of executive compensation has not worked to retain officers.²

7. Liberty cites two Commission cases that allowed protection of certain individual's compensation amounts but required aggregate compensation figures to be disclosed to the public, along with some context to demonstrate that the aggregate compensation bore a reasonable relationship to the services provided to the New Hampshire regulated utility in question. Motion at 4 (citing *Public Service Company of New Hampshire*, Order No. 25,037 (October 30, 2009) and *EnergyNorth Natural Gas, Inc. dba National Grid NH*, Order No. 25,119 (June 25, 2010). However, Liberty does not point out that in the EnergyNorth case, the compensation of all of the officers whose compensation was allocated to New Hampshire operations had already been publicly disclosed in the Company's PUC Annual Report. Similarly, concerning PSNH, the salaries of the President and Chief Operating Officer and the Vice President-Generation had been publicly disclosed in PSNH's FERC Form 1 report. The previously disclosed compensation information was not provided protection in the Commission orders cited.

8. Liberty does not disclose the salaries of its President, and Secretary/Treasurer and in its FERC Form 1. Thus, the PSNH and EnergyNorth cases cited are not applicable. Further, disclosure in this rate case is even more important as it will be the sole means by which the public may assess the reasonableness of these executive compensation amounts and the appropriateness of ratepayers paying for these compensation amounts through rates.

² Similar analysis shows less frequent turnover of Directors.

WHEREFORE, for the reasons set forth hereinabove, the Staff respectfully requests that the Commission deny Liberty's Motion for Protective Order and Confidential Treatment Regarding Compensation Information, and for Waiver of Puc 203.02 and Puc 203.08 in part and require:

- 1) the filing of compensation information for Directors, Class II; and
- 2) the public disclosure of all compensation information contained on p. II-144 of Liberty's Full Rate Case Filing Requirements, as discussed herein.

Respectfully submitted,

Staff of the Public Utilities Commission

By its Attorney,



Paul B. Dexter, #4866
21 S. Fruit St, Suite 10
Concord, NH 03301
(603) 271-6028
Paul.Dexter@puc.nh.gov

I hereby certify that, on May 10, 2019, a copy of this Objection has been hand delivered to the Commission and has been sent electronically to the Service List in this matter.



Paul B. Dexter