

State of New Hampshire
Public Utilities Commission

Docket No. DE 19-064

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

Distribution Service Rate Case

Motion for Protective Order Related to Discovery Responses

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty, through counsel, respectfully moves the Commission pursuant to Puc 203.08 for a protective order preserving the confidentiality of a single data response provided during discovery related to the second step adjustment in this matter, which is scheduled for hearing on June 24, 2020.

In support of this motion, Liberty represents as follows:

1. Liberty notified the parties pursuant to Puc 203.08 to consider the attachment to the response to Staff 11-7 to be confidential without then filing a motion. The rule allows such a claim of confidentiality:

In lieu of immediately filing a motion for confidential treatment, a party providing a document to the commission staff in discovery that the party wishes to remain confidential shall accompany the submission with a written statement that:

(1) The party submitting such documents has a good faith basis for seeking confidential treatment of the documents pursuant to this rule; and

(2) Such party intends to submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in such proceedings.

Puc 203.08(d).

2. The rule requires the party asserting confidentiality to file a motion to ensure the documents remain confidential:

Documents submitted to the commission or staff accompanied by a written statement pursuant to (d) shall be treated as confidential, provided that the party submitting the documents thereafter files a motion for confidential treatment at or prior to the commencement of the hearing in the proceeding.

Puc 203.08(e).

3. Liberty thus files this motion for confidential treatment of portions of the attachment to the response to Staff 11-7, which requested updated information regarding customers load at the Tuscan Village development. The request and response are attached to this motion. The confidential information appears in Confidential Attachment Staff 11-17.a.xlsx, the redacted version of which is attached to this motion, which contains a list of customers at the Tuscan Development, their anticipated demand, and statements as to whether they are energized, under construction, etc.

4. The confidential information consists of customer names. Customer names under the definition in RSA 363:37, I of “individual customer data” that is protected from disclosure by RSA 363:36 and RSA 91-A:5, IV.

5. The rule requires a motion for confidential treatment to contain “a detailed description of the types of information for which confidentiality is sought,” reference to the legal support for confidentiality, a “statement of the harm that would result from disclosure,” and “any other facts relevant to the request for confidential treatment.” Puc 203.08(b).

5. The data response, incorporated by reference, contains the above information.

6. The Commission recently provided the following description of its analysis of requests for confidential treatment of discovery responses:

RSA Chapter 91-A ensures public access to information about the conduct and activities of government 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. Among other types of information, RSA 91-A:5, IV exempts “confidential, commercial, or financial information.” The party seeking

protection of the information has the burden of proving that confidentiality and/or privacy interests outweigh the public's interest in disclosure. *Grafton County Attorney's Office v. Canner*, 169 N.H. 319, 322 (2016). Puc 203.08(b) requires a motion for confidential treatment to include, among other things, a "[s]pecific reference to the statutory or common law support for confidentiality" and a "detailed statement of the harm that would result from disclosure." Liberty asserted a confidentiality interest, which requires Liberty to "prove that disclosure is likely to: (1) impair the information holder's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." *Hampton Police Ass'n, Inc. v. Town of Hampton*, 162 N.H. 7, 14 (2011). The benefits of disclosure to the public are then weighed against the interest(s) in nondisclosure. *See id.*

Order No. 26,352 at 3 (April 30, 2020).

7. After review of Confidential Attachment Staff 11-7.a.xlsx, the law supporting confidentiality, and the balancing of the "benefits of disclosure to the public" against "the interests in nondisclosure," the Company respectfully asks the Commission to find the above information warrants confidential treatment.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant confidential treatment Confidential Attachment Staff 11-7.a.xlsx; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,
Liberty Utilities (Granite State Electric) Corp. d/b/a
Liberty



Date: June 24, 2021

By:

Michael J. Sheehan, Senior Counsel #6590
116 North Main Street
Concord, NH 03301
Telephone (603) 724-2135
michael.sheehan@libertyutilities.com

Certificate of Service

I hereby certify that on June 24, 2021, a copy of this Motion has been electronically forwarded to the service list in this docket.

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

Michael J. Sheehan