

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 19-057

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY**

Request for Change in Rates

Order on Motion for Protective Order and Confidential Treatment

O R D E R N O. 26,617

April 27, 2022

This order grants the Motion for Protective Order and Confidential Treatment filed by the Petitioner on January 15, 2021.

I. PROCEDURAL HISTORY

On January 15, 2021, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or “Petitioner”) filed a petition (“Petition”) requesting that the New Hampshire Public Utilities Commission (“Commission”) allow recovery of certain rate case expenses incurred by the Petitioner, the Commission Staff,¹ and the Office of the Consumer Advocate in support of Docket No. DE 19-057. The Petitioner contemporaneously filed this Motion for Protective Order and Confidential Treatment (“Motion”) seeking protection from public disclosure of certain confidential, sensitive, and proprietary information submitted in this docket, pursuant to RSA 91-A:5 and N.H. Admin. Rule Puc. 203.08. The Petitioner seeks protection specifically for the information in the attachments (“Attachments”) to the Petitioner’s Petition. The Motion is unopposed.

The Petition, Motion, and other docket filings, other than any information for

¹ Following the legislative reorganization of the PUC on July 1, 2021, these Commission staff became employees of the newly created Department of Energy.

which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at:

<https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-057.html>.

II. POSITION OF THE PETITIONER

The Petitioner argues that issuance of a protective order and confidential treatment of the redacted information in the Attachments is appropriate in this case because the information is highly sensitive and confidential in nature. The Attachments contain contract pricing and billing information and banking and account information. The Petitioner is not seeking confidential treatment for the total amount billed, acknowledging the public interest in certain billing information.

The Petitioner contends that the Attachments contain negotiated pricing, contract, and engagement terms which resulted from competitive bid processes and negotiations between the Petitioner and the contract parties. The Petitioner anticipates substantial difficulty in future negotiations with potential contract partners, particularly in obtaining agreement on favorable terms as compared to other customers of the potential contract partner. The Petitioner contends that public disclosure of the contract pricing and billing information would impose a chilling effect on the Petitioner's ability to attract contract parties who may fear public release of proprietary pricing data, impacting its ability to secure reasonable and attractive pricing.

The Petitioner adds that public disclosure of the negotiated pricing, contract, and engagement terms could harm the Petitioner's vendors and consultants. The Petitioner asserts that public disclosure would place the vendors and consultants at a competitive disadvantage because competitors would have information to base future bids for providing services to the Petitioner. That disadvantage may extend to the

vendors and consultants' ability to negotiate with existing and potential clients.

The Petitioner contends that public disclosure of private banking account information for various vendors in the Attachments serves no legitimate public interest. The Petitioner argues that disclosing the private banking account information would put the vendors' accounts at risk for fraud and make it less likely that those vendors, or others, would trust the Petitioner in future business dealings.

Therefore, the Petitioner concludes that public disclosure of the redacted information in the Attachments is not warranted in this case.

III. COMMISSION ANALYSIS

A. Right-to-Know Law Standard

As a general matter, the Right-to-Know Law provides members of the public with the right to inspect records in the possession of the Commission. See RSA 91-A:4, I. The Right-to-Know Law is interpreted by the New Hampshire Supreme Court "with a view toward disclosing the utmost information in order to best effectuate [the] statutory and constitutional objective of facilitating access to public documents."

Seacoast Newspapers, Inc. v. City of Portsmouth, 173 N.H. 325, 330 (2020).

"Accordingly, although the statute does not provide for unfettered access to public records," its provisions are broadly construed in favor of disclosure and its exemptions are interpreted restrictively. *Id.* at 330-31.

"The commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law based upon the information submitted." Puc 203.08(a). The exemption that is commonly implicated by motions for confidential treatment is contained in RSA 91-A:5, IV. As relevant here, that paragraph exempts "[r]ecords pertaining to . . .

confidential, commercial, or financial information . . . and other files whose disclosure would constitute an invasion of privacy” from public disclosure. See RSA 91-A:5, IV. Determining whether the exemption for “confidential, commercial, or financial information” applies requires an “analysis of both whether the information sought is confidential, commercial, or financial information and whether disclosure would constitute an invasion of privacy.” *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 355 (2020) (quoting *Union Leader Corp. v. N.H. Housing Fin. Auth.*, 142 N.H. 540, 552 (1997)).

The New Hampshire Supreme Court has not adopted a single test to determine whether material is “confidential,” although the Court has found “the standard test employed by the federal courts” instructive. *Union Leader Corp.*, 173 N.H. at 355. Under that standard, to establish that information is sufficiently “confidential” to justify nondisclosure, “the party resisting disclosure must prove that disclosure is likely: (1) to impair the [government]’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *Id.* (quotation omitted).

Whether documents are “commercial or financial” depends on the character of the information sought. *N.H. Housing Fin. Auth.*, 142 N.H. at 553. “Information is commercial if it relates to commerce.” *Id.* Thus, “information may qualify as commercial even if the provider’s . . . interest in gathering, processing, and reporting the information is noncommercial.” *Id.* (quotation omitted). “Conversely, not all information generated by a commercial entity is financial or commercial.” *Id.* (citation omitted).

Even if certain records are determined to be confidential, commercial, or financial information, “these categorical exemptions mean not that the information is

per se exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* Accordingly, whether the disclosure of "confidential, commercial, or financial information" results in an invasion of privacy involves a three-step analysis. *See Union Leader Corp.*, 173 N.H. at 355.

First, we must evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. *Id.* Second, we assess the public's interest in disclosure. *Id.* Third, we balance the public interest in disclosure against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure. *Id.* If no privacy interest is at stake, then the Right-to-Know Law mandates disclosure. *Id.* Further, "whether information is exempt from disclosure because it is private is judged by an objective standard and not by a party's subjective expectations." *Id.* The party resisting disclosure bears the burden of proving that the records should not be disclosed. *See Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 476 (1996).

B. Analysis

i. Pricing, Contract, and Engagement Terms

The redacted pricing, contract, and engagement terms are "relate[d] to commerce" and therefore the information is "commercial or financial" within the meaning of RSA 91-A:5, IV. *N.H. Housing Fin. Auth.*, 142 N.H. at 553. As commercial or financial information, the Petitioner's privacy interest in the information must be balanced against the public's interest in disclosure. *See id.*

To establish that the information is sufficiently confidential to justify nondisclosure, the Petitioner must show that disclosure is likely "to cause substantial harm to the competitive position of the person from whom the information was obtained." *Union Leader Corp.*, 173 N.H. at 355. The Petitioner contends that the pricing, contract, and engagement terms are sufficiently confidential because public

disclosure of the information would place the Petitioner and its contract partners at a competitive disadvantage in future negotiations for pricing, contract and engagement terms with other parties.

To begin the analysis, we must evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. *See id.* The privacy interest advanced by the Petitioner's Motion is that disclosure of the redacted information would harm the Petitioner's and its contract partners competitive position in future negotiations. The Petitioner contends that public disclosure of the terms would harm the Petitioner's ability to attract contract partners who may fear the release of their proprietary pricing data, consequentially harming its ability to secure reasonable and attractive pricing from contract partners. The Petitioner also articulates a competitive disadvantage imposed by public disclosure of the terms because the Petitioner may face difficulties in future negotiations if its contract partners had access to results of the Petitioner's previous bidding and negotiations processes.

Next, we must assess the public's interest in disclosure. *See id.* Generally, there is a public interest in the redacted billing information as the costs are assumed by the public. In acknowledgement of this interest, the Petitioner did not redact the total amount billed and provided non-redacted copies of the Attachments to the Commission staff and the Office of the Consumer Advocate, allowing inspection of the billing details. The purpose of the Right-to-Know Law is to provide the utmost information to the public and "what its 'government is up to.'" *See New Hampshire Right to Life v. Director, N.H. Charitable Trust Unit*, 169 N.H. 95, 111 (2016). Here, the non-redacted information about the total billing provides the public sufficient knowledge of "what the government is up to." The specific pricing, contract, and engagement terms do little to provide the public more substantive information of the

contractual relationship.

Finally, we must balance the public interest in disclosure against the government's interest and the individual's privacy interest in nondisclosure. *See id.* The Petitioner articulated a significant interest in nondisclosure compared to the little public interest in the redacted terms. For the reasons explained in the foregoing paragraphs, we conclude that the Petitioner's and its vendors' and consultants' interest in nondisclosure outweighs the public's interest in disclosure.

ii. Banking Account Information

The Petitioner's Motion also seeks confidential treatment for the redacted information relating to the private banking account information of various vendors in the Attachments. The redacted private banking account information is "relate[d] to commerce" and is therefore "commercial or financial" within the meaning of RSA 91-A:5, IV. *N.H. Housing Fin. Auth.*, 142 N.H. at 553. As commercial or financial information, the Petitioner's privacy interest in the information must be balanced against the public's interest in disclosure. *See id.*

To establish that the information is sufficiently confidential to justify nondisclosure, the Petitioner must show that disclosure is likely "to cause substantial harm to the competitive position of the person from whom the information was obtained." *Union Leader Corp.*, 173 N.H. at 355. The Petitioner contends that the private banking information is sufficiently confidential because public disclosure of the information would put the applicable vendors at risk for fraud and would place the Petitioner at a competitive disadvantage because future contract partners may hesitate to engage in business with the Petitioner for risk of public disclosure of their private banking account information.


We first evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. *See id.* There is undoubtedly a privacy interest at stake regarding the disclosure of the Petitioner's vendors' private banking account information. As the Petitioner articulated, public disclosure of the private banking account information would put the vendors at risk for fraud. The Petitioner maintains a separate, and less severe, interest in the non-disclosure of the private banking account information because such disclosure would harm the Petitioner's ability to contract with parties who may hesitate to enter into contracts that may reveal their private banking account information.

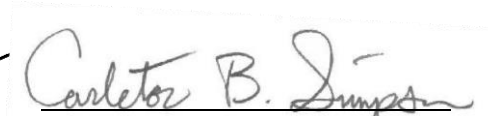
Turning to the public's interest in disclosure, such interest is negligible to non-existent. The public has no interest in the private banking account information of the Petitioner's vendors. Without a public interest to balance against the privacy interests, the analysis concludes here. The Petitioner and its vendors' interest in non-disclosure outweighs the non-existent public interest, thus warranting confidential treatment of the private banking account information in the Attachments.

Based upon the foregoing, it is hereby

ORDERED, that the Petitioner's Motion for Protective Order and Confidential Treatment is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of April, 2022.


Daniel C. Goldner
Chairman


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 19-057

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Email Addresses

ClerksOffice@puc.nh.gov
nhregulatory@eversource.com
aboyd@acadiacenter.org
kelly@cleanenergynh.org
rburke@nhla.org
jessica.chiavara@eversource.com
john@johncoffman.net
roger@fsconline.com
julianne.m.desmet@oca.nh.gov
paul.b.dexter@energy.nh.gov
jdonahue@preti.com
pearl.donohoo-vallett@brattle.com
jay.e.dudley@energy.nh.gov
stephen.r.eckberg@energy.nh.gov
eemerson@primmer.com
sam@cleanenergynh.org
joseph.fontaine@des.nh.gov
thomas.c.frantz@energy.nh.gov
mhorne@hcc-law.com
tklaes@blueridgecs.com
donald.m.kreis@oca.nh.gov
karen.j.moran@energy.nh.gov
scott@sjmuellerlaw.com
dmullinax@blueridgecs.com
elizabeth.r.nixon@energy.nh.gov
amanda.o.noonan@energy.nh.gov
ocalitigation@oca.nh.gov
rebecca.ohler@des.nh.gov
rorie.e.patterson@energy.nh.gov
melissa.price@eversource.com
jralston@keeganwerlin.com
agustin.ros@brattle.com
sanem.sergici@brattle.com
chris@cleanenergynh.org
stower@nhla.org
jacqueline.m.trottier@energy.nh.gov
dvenora@keeganwerlin.com

david.k.wiesner@energy.nh.gov
jrw@psu.edu
craig.wright@des.nh.gov