

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

Docket No. DE 19-057

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) hereby requests that the New Hampshire Public Utilities Commission (“Commission”) grant protection from public disclosure of certain confidential, sensitive and proprietary information submitted in this docket pursuant to Puc 203.08 and RSA 91-A:5. Specifically, the Company requests that the Commission protect from public disclosure certain information contained in attachments to its request for recovery of rate case expenses filed contemporaneously with this motion (the “Confidential Attachments”).

As explained below, the Confidential Attachments contain confidential commercial and financial information, proprietary vendor data and work product, and private banking and account information, the disclosure of which would constitute an invasion of privacy. In support of this motion, Eversource states as follows:

I. LEGAL STANDARD

Puc 203.08(a) states that 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.” The motion is to contain: “(1) The documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought; (2) Specific reference to the statutory or common law support for confidentiality; and (3) A detailed

statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.” Puc 203.08(b).

RSA 91-A:5, IV exempts certain governmental records from public disclosure, including “[r]ecords pertaining to internal personnel practices; confidential, commercial, or financial information . . . ; and personnel . . . and other files whose disclosure would constitute invasion of privacy.” In determining whether documents are entitled to exemption pursuant to RSA 91-A:5, IV, the Commission applies a three-step analysis to determine whether information should be protected from public disclosure. *See Lambert v. Belknap County Convention*, 157 N.H. 375 (2008); *see also Public Service Company of New Hampshire*, Order No. 25,313 (December 30, 2011) at 11-12. 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 stated that disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5. If both steps are met, the Commission balances the privacy interest with the public interest to determine if disclosure is appropriate. *Public Service Company of New Hampshire*, Order 25,167 (November 9, 2010) at 3-4.

II. DESCRIPTION OF CONFIDENTIAL ATTACHMENTS

As required by N.H. Code Admin. Rules Puc 1905.03, Eversource has included with its request the information supporting the rate case expenses incurred in this proceeding. More particularly, Eversource has included information on the bidding processes and resulting contracts for the various vendors used in the case, copies of invoices, and descriptions of the dates and charges for the services rendered. Each of these documents contains, to varying

degrees, information about the billing and rates to be charged to Eversource. This billing information should be retained as confidential. Further, the Confidential Attachments include, for various vendors, their private banking and account information which was necessary to process invoices and payments. That banking information should also be retained as confidential.

As explained below in Section III, there is a privacy interest at stake in each of the Confidential Attachments that would be invaded by public disclosure, and where the privacy interest substantially outweighs any public interest in disclosure. In addition, public disclosure of the Confidential Attachments is not necessary to inform the public of the conduct and activities of its government, and thus disclosure is not warranted. *See Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5.

III. DISCUSSION

The Confidential Attachments containing contract pricing and billing information and those that contain banking and account information are highly sensitive and confidential in nature and the Company has a strong privacy interest at stake relative to the information in those attachments. There are several factors that support a finding that this information should be granted protective treatment, including factors that affect the business interests of the Company and its counterparties, and the interests of the Company's customers who ultimately bear the cost of services and materials procured through negotiated contracts. The negotiated pricing, contract and engagement terms included in these attachments were the result of competitive bid processes and negotiations between the Company and the contract counterparties. If the Company were required to disclose these competitively sensitive terms in this docket, the Company would likely experience substantial difficulty in the future in negotiating successfully with potential contract

partners; particularly in terms of getting potential vendors and negotiating partners to agree to a favorable terms as compared to other customers of the contract partner. Moreover, disclosing the banking information would put the vendors' accounts at risk for fraud and would make it less like that those vendors, or others, would trust the Company in future business dealings.

A decision requiring the Company to disclose negotiated pricing, contract and engagement terms in this proceeding would put potential vendors and negotiating partners on notice that their pricing information and other negotiated terms may be disclosed to the public in the Commission's approval process, including to persons who are seeking to procure similar services from the vendor. As a result, the disclosure of this information would have a chilling effect on the Company's ability to: (1) attract contract partners who may fear that the Commission will ultimately release proprietary pricing data to their other customers; and (2) secure reasonable and attractive pricing from contract partners for the benefit of the Company's customers.

Additionally, the Confidential Attachments containing negotiated pricing terms should be protected by the Commission and remain confidential because such information is competitively sensitive, and its disclosure could harm the Company's vendors and consultants. Should this information be made available to the public, the Company's vendors and consultants would be placed at a competitive disadvantage vis-à-vis their competitors because such competitors would have information by which to base future bids for providing services to the Company. Moreover, disclosure of such information may place the Company's vendors and consultants at a competitive disadvantage with respect to their ability to negotiate fees for services with existing and potential clients. This result would disadvantage the Company to the extent that the Company's vendors and consultants determine in the future not to bid on the Company's

requests for services because of the potential competitive disadvantages that may arise should they do so; which would deprive the Company of access to certain expertise necessary for Commission proceedings.

The Company acknowledges that there is some public interest in the billing information, that interest is balanced by the quality of the information which would be made public – the total amount paid by the company for the consultants’ efforts. Therefore, while the Company requests protective treatment for the components of the billing information (e.g., hours and specific rates), the public would still have access to the total amount billed. Moreover, full disclosure of the confidential information is provided to the Commission Staff and the Office of Consumer Advocate, which allows the details of the billings to be subject to investigation and scrutiny. With respect to the private banking account information, the Company contends that there is no legitimate public interest in that information. In balancing the Commission’s privacy analysis, the privacy interest of the Company and its counterparties outweigh and are aligned with the public interest because if the negotiated terms and pricing information were disclosed the Company would have difficulty procuring like services from vendors in the future at the lowest cost, which would ultimately harm the Company’s customers.

The Commission has previously protected commercially sensitive negotiated pricing information on the basis that the public’s interest in disclosure is outweighed by the “substantial harm to the competitive positions” of the Company and its vendors, as well as the effect it would have on the Company’s customers in higher costs. *Liberty Utilities Corp.*, Order No. 26,280 (August 1, 2019) at 4-5 (protecting negotiated pricing terms contained in gas supply contract); *Pennichuck East Utility, Inc.*, Order No. 26,222 (February 26, 2019) (protecting negotiated pricing and billing rates of utility’s attorney); *Public Service Company of New Hampshire*, Order

No. 26,057 (September 19, 2017) at 10 (protecting bid prices in responses to RFP). With respect to banking information, the Commission has previously found that such information is “clearly” private and that there is no reasonable public interest that would be served by disclosure. *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 25,690 (July 9, 2014) at 4. The same concerns attach to the information here, and the Commission should follow its prior decisions and grant confidential treatment to the information in these attachments.

IV. CONCLUSION

Based on the foregoing, the Company and its vendors have privacy interests at stake that would be invaded by disclosure of information in the Confidential Attachments. In addition, the disclosure of the Confidential Attachments is not necessary to inform the public of the conduct and activities of its government and would not serve that purpose, and therefore disclosure is not warranted. *See Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5. On balance, the harm that would result from public disclosure is substantially outweighed by the need for confidential treatment.

For the above reasons, the Company respectfully requests that the Commission grant this motion for protective order.

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



Dated: January 15, 2021

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.



Matthew J. Fossum

January 15, 2021