

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

EVERSOURCE ENERGY

2019 Least Cost Integrated Resource Plan

Docket No. DE 19-139

MOTION FOR RECONSIDERATION AND/OR CLARIFICATION

NOW COMES Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) and, pursuant to Puc 203.07 and RSA 541:3, hereby moves for reconsideration and/or clarification of certain of the Commission’s findings and rulings in Order No. 26,350 (April 23, 2020) (the “Order”) in the instant docket. The Order does not appropriately clarify what information falls under certain of the Commission’s rulings and appears to incorrectly conclude that certain information contained in Eversource’s Least Cost Integrated Resource Filing (“LCIRP”) is not Confidential Energy Infrastructure Information (“CEII”). In support of this submission, Eversource says the following:

1. Pursuant to RSA 541:3, the Commission may grant reconsideration when a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal. *Id.* at 4-5. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Id.* at 5.

2. As part of its initial submission in this docket, Eversource provided numerous documents including maps and one-line diagrams and other information pertaining to the bulk electric system. As part of that filing, Eversource also filed a motion for confidential treatment

pertaining to various types of information submitted. One of Eversource's arguments related to certain information being redacted as CEII pursuant to Federal law and the regulations of the Federal Energy Regulatory Commission ("FERC"). In particular, Eversource stated "the information Eversource understands constitute CEII (and which has been redacted) are substation one-line diagrams or substation maps relating to bulk substations, as well as information on transformer ratings or loading information, and information about the status of bulk substations." August 23, 2019 Eversource Motion for Confidential Treatment in Docket No. DE 19-139 at 3.

3. On October 14, 2019, the Commission Staff objected to Eversource's classification of "bulk substation status, transformer rating, and transformer loading information as CEII". October 14, 2019 Objection of Staff at 2. No other party responded to Eversource's motion. On April 23, 2020, the Commission issued Order No. 26,350 pertaining to Eversource's request for confidential treatment. With respect to the information that is the subject of this motion, the Order stated the following:

No party objected to Eversource's request for confidential treatment of bulk substation one-line diagrams or maps.

Bulk Electric System Data and CEII

Eversource asserts that the bulk electric system data at issue is CEII and exempt from mandatory disclosure under the Freedom of Information Act. According to Eversource, FERC "imposes a duty on those entities creating or maintaining CEII to protect that information from unauthorized disclosure." Motion at ¶ 3-4. We do not find that the information at issue is CEII.

FERC defines CEII as "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) does not simply give the general location of the critical infrastructure." 18 CFR § 388.113(c)(2). FERC

imposes a duty on those entities creating or maintaining CEII to protect that information from unauthorized disclosure. 18 CFR § 388.113(h).

Review of the CEII regulations reveals a narrower application of the protection than suggested by Eversource. The scope of CEII protection under federal law is detailed in 18 CFR § 388.113(a), which states “This section governs the procedures for submitting, designating, handling, sharing, and disseminating Critical Energy/Electric Infrastructure Information (CEII) *submitted to or generated by* the [Federal Energy Regulatory] Commission” (emphasis added).

Similarly, the definition of CEII is limited to “information generated by or provided to the [Federal Energy Regulatory] Commission... that is designated as critical electric infrastructure information by the Commission or the Secretary of the Department of Energy pursuant to section 215(A)(d) of the Federal Power Act.” 18 CFR § 388.113(c)(1) (emphasis added). Eversource does not cite any instances where FERC has designated the information at issue to be CEII. The Company merely asserts that it “understands” the information at issue represents CEII and that the information “[i]n Eversource’s assessment... is entitled to protection under federal law.”

Because CEII protection applies only to information submitted to or generated by FERC that has been designated to be CEII, we cannot find on the record before us that any of the information at issue constitutes CEII that would be exempt from public disclosure.

Order No. 26,350 at 6-7 (emphasis in original). The Commission then went on to analyze the same information under its more traditional balancing test and found it to be worth confidential treatment. Order No. 26,350 at 10-11. While Eversource agrees that the information should be confidential, the scope of, and basis for, the Commission’s conclusions relative to the CEII status of the information are not clear to Eversource. The Commission discusses the maps and one-line diagrams by noting that no party objected to their confidential treatment, but then goes on to discuss CEII relating to “the bulk electric system data at issue” and finds that “the information at issue is [not] CEII”. This section of the Order, however, does not clarify which particular data is “at issue” as it pertains to CEII. Thus, it is not clear exactly what the Commission’s rulings are, and it is likewise unclear to which data those rulings apply. Accordingly, the Commission’s conclusions and findings should be reconsidered, clarified, or both.

4. As a first matter, the maps and one-line diagrams are unquestionably CEII and are entitled to treatment as such. While the Commission notes that no party objected to Eversource's claims relative to those items, when the Commission granted them confidential treatment it appears to have concluded that they are not CEII. The Commission should conclude that they are CEII and are entitled to proper treatment as CEII.

5. As noted by Eversource in its initial motion, and by the Commission in its Order, FERC defines CEII as:

specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) does not simply give the general location of the critical infrastructure.

18 CFR § 388.113(c)(2). The maps and one-line diagrams fit squarely within each and every factor of the above definition. Moreover, those maps and diagrams are provided to FERC as part of its regular Form 715 process pursuant to 18 CFR §141.300 and are treated as CEII in that process. As such, to the extent submission to FERC is necessary, that information is submitted to FERC and is subject to the controls and limitations that attach to CEII submitted to FERC.

Notably, FERC's regulations specify that:

Critical Electric Infrastructure Information is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(3) and *shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or tribal law requiring public disclosure of information or records pursuant to section 215A(d)(1)(A) and (B) of the Federal Power Act.*

18 CFR §388.113(c)(1) (emphasis added). Furthermore, the FERC has also established a process by which it facilitates the voluntary sharing of CEII with, between, and by State authorities. 18 CFR §388.113(f). In short, the maps and one-line diagrams are not merely entitled to

confidential treatment. Rather, they are CEII that is required to be protected from disclosure (and otherwise handled) consistent with the requirements of FERC. Accordingly, Eversource requests that the Commission grant rehearing or clarification of Order No. 26,350 and find that the one-line diagrams and maps are not subject to the Commission's traditional balancing test, but are CEII and are entitled to protection as CEII.

WHEREFORE, Eversource respectfully requests that the Commission:

- A. Grant this Motion; and
- B. Grant such further relief as is reasonable and appropriate.

Respectfully submitted this 21st day of May 2020.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a Eversource Energy

By its Attorney,



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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.

Date: May 21, 2020



Matthew J. Fossum