

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

**Public Service Company of New Hampshire d/b/a Eversource Energy**

**Docket No. DE 19-197**

**Development of a Statewide, Multi-Use Online Energy Data Platform**

**MOTION FOR CONFIDENTIAL TREATMENT AND PROTECTIVE ORDER**

Public Service Company of New Hampshire d/b/a Eversource Energy, (“Eversource” or the “Company”) respectfully requests, pursuant to N.H. Code Admin. Rules Puc § 203.08 and RSA 91-A:5, XI, that the New Hampshire Public Utilities Commission (“Commission”) grant protection from public disclosure of certain confidential and proprietary information provided by the Company in this docket. Specifically, Eversource requests that the Commission issue an order requiring confidential treatment for information related to cyber security plans provided by the Company to the Commission Staff and OCA, and the parties who are signatories in the instant docket in the course of developing the proposed settlement agreement submitted on April 28, 2021 in the instant proceeding, specifically: the Security Control Scoring Tool on page 14 of Appendix C to the proposed settlement agreement (the “Confidential Information”). In support of this motion, the Company states the following:

1. The Commission issued an Order of Notice on December 13, 2019 opening the instant docket according to “RSA 378:51, II [which] directs the Commission to determine the following during the adjudicative proceeding . . . standards for data accuracy, retention, availability, privacy, and security, including the integrity and uniformity of the logical data model; and (3) financial security standards or other mechanisms to assure third-party compliance with privacy standards”. (Order of Notice at 1). To make such a determination, the Commission stated it “will be guided

by the standards for the energy data platform contained in RSA 378:51, I, which include . . . allowing the sharing of individual customer data consistent with the opt-in requirements for third-party access under RSA 363:38; protection from unauthorized disclosure of utility customers' personally identifying information" (Order of Notice at 1-2).

2. As part of the proposed settlement agreement, security protocols were developed to screen third-party potential data platform users who wish to access utility customer data. These protocols were developed by Eversource along with Unitil and in consultation with all parties to the proposed settlement agreement and are meant to ensure that customer data will be properly safeguarded from unauthorized disclosure, including inadvertent third-party data exposures or data breaches of third-party systems. Part of those protocols includes a questionnaire for third-party platform users to ascertain if those users have sufficient security safeguards in place. The answers to this questionnaire are each assigned a number of points; the points to the answers are then tallied to determine if the third party's safeguards are sufficient to permit access to customer data via the platform. The result of this calculation is in line with the expectations in RSA 363:38, V(b), "that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, use, destruction, modification, or disclosure".
3. 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 shall 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).

4. RSA 91-A:5, XI exempts certain governmental records from public disclosure, including “[r]ecords pertaining to information technology systems, including cyber security plans, vulnerability testing and assessments materials, detailed network diagrams, or other materials, the release of which would make public security details that would aid an attempted security breach or circumvention of law as to the items assessed.” In this case, the materials at issue fit squarely within the definition of materials exempt from disclosure.
5. As noted above, the materials for which Eversource seeks protection are assessment materials pertaining to the cybersecurity protocols, practices, and systems in use by third parties for safeguarding private customer information. The Confidential Information contains the scoring system for the security questionnaire for third parties who wish to access utility customer data through the data platform. Public disclosure of this scoring system would provide a sort of “security playbook”, showing the hierarchy of importance of the various security measures about which the questionnaire inquires, and creating the potential for a “race to the bottom” for minimum compliance without regard to what protections are most appropriate and adequate for a given third party trying to gain access to the platform.

6. Allowing for the possibility of disclosure “would aid [a] . . . circumvention of law as to the items assessed”, namely the security measures being recommended and their worth which should not be eroded by divulging the weight by which they are scored. The security plans and vulnerability assessments in the Confidential Information, if revealed, would compromise the ability to fairly and accurately assess the cybersecurity capabilities of those parties, and would erode confidence that those systems and protocols meet relevant and adequate standards for data protection. Accordingly, the Commission should hold that information exempt from public disclosure and should order all entities with access to it through this proceeding to maintain its confidentiality and to refrain from disclosing it further.
  
7. While the above should be more than sufficient justification for the Commission to maintain the confidentiality of the referenced information pursuant to the explicit provision of RSA 91-A:5, XI, there are further reasons to exempt this material from disclosure. In other contexts, when determining whether documents are entitled to exemption pursuant to RSA 91-A:5, the Commission has applied 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. While this test is generally applied to assess potential invasions of privacy, to the extent the Commission would find the test applicable in this context, it too would cut in favor of maintaining the confidentiality of the information. Under this test, 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 at 5 (September 9, 2015). 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 at 3-4 (November 9, 2010).

8. The Company and its customers have a substantial privacy interest in the Confidential Information as it contains information regarding cyber security plans for the platform, to which customers from all New Hampshire utilities will participate. To the extent the Confidential Information is revealed, it makes it more likely that a third party would not adequately protect any personally identifiable information that the third party obtains from use of the platform. For its part, the Company takes all reasonable measures to keep its customers' personally identifiable information out of the public domain. The release of any of information about residential utility customers would constitute an invasion of privacy, as well as undermine the duty of service providers under RSA 363:38, IV requiring "use [of] reasonable security procedures and practices to protect individual customer data from unauthorized access, use, destruction, modification, or disclosure". Accordingly, there is a strong privacy interest in the Confidential Information because only by safeguarding that information can there be reasonable assurance that customer data from the platform will be held by responsible actors.
9. The second criterion of the Commission's analysis is whether there is a public

interest in disclosure. This motion seeks protection only of the scoring assigned to the security questions, not the questions themselves. Additionally, the proposed settlement agreement provides that guidance will be provided on how third parties can implement proper security and protective measures. The only public interest is not in the redacted information itself, but rather what can be done with it outside of Commission files if made available, which the New Hampshire Supreme Court has held is not a legitimate public interest. *Lamy v. New Hampshire Pub. Utilities Comm'n*, 152 N.H. 106, 110-111 (2005). Moreover, as the Supreme Court has noted, the purpose of RSA 91-A is to provide information about what the government is “up to”. *See, e.g., Goode v. New Hampshire Office of Legislative Budget Ass’t.*, 148 N.H. 551, 555 (2002). “If disclosing the information does not serve this purpose, ‘disclosure will not be warranted even though the public may nonetheless prefer, albeit for other reasons, that the information be released.’” *EnergyNorth Natural Gas, Inc.*, Order No. 25,119 (June 25, 2010) at 8 (quoting *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 477 (1996)). As applied in this instance, disclosure of the scoring system is itself not information in the public interest but would be used as a tool for third parties to be able to provide only the bare minimum of security protection measures. It does nothing to inform any parties or entities about the activities of the Commission or the government more generally. Accordingly, any public interest is slight.

10. As to the final requirement of the Commission’s analysis, balancing the relevant public and private interests, as noted above, there is a substantial and significant interest in confidentiality of the information and only a slight public interest and the balance clearly

weighs in favor of non-disclosure. Further, there is a direct link between disclosure of the Confidential Information in the public record to an increased risk of disclosure of utility customer personally identifiable information in violation of RSA 363:38. The substantial public interest in avoiding such a statutory violation outweighs the questionable interest in public disclosure of this considerably limited information. Granting this motion ultimately redounds the benefits of utility customers by better protecting them from an invasion of privacy. *See EnergyNorth Natural Gas, Inc.*, Order No. 25,064 (January 15, 2010).

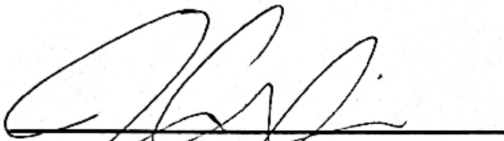
11. Based on the foregoing, the identified Confidential Information is entitled to confidential treatment pursuant to the express statutory language of RSA 91-A:5, XI. It is also entitled to such treatment pursuant to any analysis of the relevant privacy interests, to the extent those are applicable here. Lastly, Eversource notes that given the substantial evidentiary record in this docket, the disclosure of the Confidential Information constitutes a relatively small subset of such record, and is not necessary to inform the public of the conduct and activities of its government and would not serve that purpose. *See Electric Distribution Utilities*, Order No. 25,811 at 5 (September 9, 2015). .

WHEREFORE, the Company respectfully requests that the Commission grant this Motion and issue an appropriate protective order pertaining to the identified Confidential Information and those in this proceeding with access to it.

Respectfully submitted this 28<sup>th</sup> day of April 2021.

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

By its Attorney,



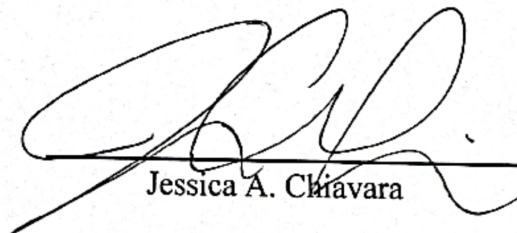
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding.

Dated at Manchester, New Hampshire this 28<sup>th</sup> day of April 2021.



Jessica A. Chiavara