

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DE 19-197

Electric and Natural Gas Utilities

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

Motion for Confidential Treatment

The Data Platform Governance Council (“Council”) respectfully moves the Commission pursuant to RSA 91-A:5 and Puc 203.08 to grant confidential treatment of (1) the evaluation matrix used to select the winning bidder to assist with the NH Utility back office integration that was filed May 19, 2023, and (2) the identity of the unsuccessful bidder and their bid amount for assistance with a GRIP proposal, which the Council presented to the Commission on October 12, 2023.

In support of this motion, the Council states as follows:

Background

1. The Council asserted confidentiality of the following pieces of information:
 - a. the evaluation matrix used to select the winning bidder for the work to assist with the NH Utility back office integration, filed confidentially on May 19, 2023;
 - b. the winning bidder’s identity and its total price for assessing the utilities back-office systems for integration with the data platform, as stated in the Council’s July 20, 2023, letter;
 - c. the identity of the winning bidder and winning bid prices for the proposed work to assist the Council with submitting a GRIP proposal to the US DOE, as provided in the Council’s October 12, 2023, presentation to the Commission; and
 - d. the identity of the unsuccessful bidder and its bid price for assistance with the GRIP proposal.

2. The Council withdraws its request for confidential treatment of item (b), Utelligent's identity and its total price. Utelligent's name was discussed at the October 12 presentation, its work product will be publicly provided to the Commission in the future as this docket progresses, and the utilities will seek recovery of Utelligent's costs.
3. The Council also withdraws its request for confidential treatment of (c) the winning bidder for assistance with the GRIP process and the contract amount. The winning consultant may not be involved at the Commission as their work is outside this docket, but their identity and fees will also be disclosed when the utilities seek recovery of their costs.
4. However, the Council maintains its requests to maintain confidentiality of (a) the evaluation matrix and (d) the bidder not selected for the GRIP matter and that consultant's bid amount, which were orally discussed at the October 12, 2023, status conference.

Analysis

5. Pursuant to *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), the Commission applies a three-step analysis to determine whether information should be protected from public disclosure. *See, e.g., Public Serv. Co. of N.H.*, Order No. 25,313 at 11-12 (Dec. 30, 2011).
6. The first step under *Lambert* is to determine if there is a privacy interest at stake that would be invaded by disclosure. If so, the second step is to determine if there is a public interest in disclosure, that is, whether disclosure would inform the public of the conduct and activities of its government. Otherwise, public disclosure is not warranted. *Public Serv.*

Co. of N.H., Order No. 25,167 at 3 (Nov. 9, 2010). If these first two steps are met, the Commission must then weigh the public interest benefits of disclosure against the harm disclosure may cause and determine which outweighs the other. *Lambert*, 157 N.H. at 385; Order No. 25,167 at 3-4.

7. Commission rules incorporate RSA 91-A:5 as the authority under which parties may seek confidential treatment:

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

Puc 203.08(a). As stated above, RSA 91-A:5, IV exempts from public disclosure records that constitute “confidential, commercial, or financial information,” and RSA 91-A:5, XI exempts from disclosure certain information “pertaining to information technology systems.”

8. The Commission has often recognized that it RSA 91-A:5, IV confers a privacy interest in competitively sensitive information carry as “confidential, commercial, or financial information.” *See Consolidated Communications Holdings*, Order No. 26,040 at 9 (July 11, 2017) (Commission granted confidential treatment of “information [that] represents non-public, commercially-sensitive financial and operational information of companies engaged in a competitive industry that is subject to limited state regulation in New Hampshire”).
9. Applying this test here, the Council has demonstrated, first, that there are privacy interests in the evaluation matrix and in the identity and bid amount of the unsuccessful bidder. The evaluation matrix describes how the Council considered and weighed components of the

bids, an approach that the Council may follow in assessing responses to the future data platform RFP. Disclosure could impair the competitiveness of that future RFP. And the unsuccessful bidder has a privacy and competitive interest in protecting its identity and its bid amount. The Commission has long protected third party pricing information and has codified the confidentiality of such information in default service and cost of gas proceedings. See Puc 201.06(a)(11) and (15).

10. The Council has thus established that there are statutorily recognized privacy interests in the evaluation matrix and unsuccessful bidder information, satisfying the first step of the *Lambert* analysis.
11. The second step in the *Lambert* analysis is to determine whether there is a public interest in disclosure of the confidential information; that is, whether releasing the information lends insight into the workings of the Commission as it relates to this case. The Council acknowledges some theoretical public interest in the confidential information as it may play a role in how the Commission determines issues or authorizes recovery in this docket.
12. However, to the extent there is some level of public interest, the third step of the *Lambert* analysis asks whether those interests in transparency outweigh the substantial harms that would result from disclosure. The Council submits that in both cases the substantial harms of disclosure outweigh the modest benefits of disclosure.
13. As for the evaluation matrix, disclosure could undermine the competitiveness of future RFPs, especially the RFP for the data platform itself because knowledge of how the Council evaluates bids could affect the quality of the bids and the overall robustness of the RFP. And any confidential treatment of the matrix and the Council's evaluation of the bids

received is balanced by the Commission's evaluation of the final bid that the Council presents to the Commission for approval. The Commission's evaluation of that final proposal will be at a hearing and transparent to all.

14. Disclosure of the unsuccessful bidder information is of little value to the Commission and could cause substantial competitive harm to that bidder. The unsuccessful bidder information would also provide little, in any, probative information to assist the Commission's work in this docket.
15. Given the harm that disclosure could cause and the ability of the Commission to convey to the public any role that the confidential information played in its analysis of the matters to be decided, the *Lambert* balancing test favors a finding that the evaluation matrix and unsuccessful bidder information should be granted confidential treatment.
16. For these reasons, Liberty asks that the Commission issue a protective order preventing the public disclosure of the information described above.

WHEREFORE, the Governance Council respectfully asks that the Commission:

- A. Grant this motion and order confidential treatment of; and
- B. Grant such further relief as is just and equitable.

Respectfully submitted,
The Platform Governance Council



Date: October 31, 2023 By: _____

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Certificate of Service

I hereby certify that on October 31, 2023, I electronically sent a copy of this motion to the service list in this docket.



Michael J. Sheehan